

VOL. V

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-vs-

10-CR-219S

TONAWANDA COKE CORPORATION
MARK L. KAMHOLZ,

Defendants.

Proceedings held before the

Honorable William M. Skretny, U.S.

Courthouse, 2 Niagara Circle, Buffalo,

New York on March 5, 2013.

APPEARANCES:

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U.S. Department of Justice,
Appearing for the United States.

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JEANNE M. GRASSO, ESQ.,
ARIEL S. GLASNER, ESQ.,
Appearing for Tonawanda Coke Corporation.

RODNEY PERSONIUS, ESQ.,
Appearing for Mark L. Kamholz.

Also Present: Lauren DiFillipo, Paralegal
Sheila Henderson, Paralegal

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1 (Jury not present in the courtroom.)

2 THE COURT: Okay. We have got a couple of
3 preliminary matters. I mean, if you're ready --
4 we've got a few minutes. So, are you all set? And
5 if anybody needs more time, that's okay.

6 MR. LINSIN: We're prepared, your Honor.

7 THE COURT: Okay.

8 MR. MANGO: Your Honor, do you want the
9 witness outside? She is sitting -- I don't know
10 what issues we may discuss.

11 THE COURT: No, I don't think so. I don't
12 think that's necessary. If you think, as we is
13 discuss these things, that it's uncomfortable for
14 her, whatever, we'll move on. But some of it is
15 administrative. Part of it is a continuation of
16 one of the discussions we had yesterday.

17 But I think for record purposes, in United
18 States versus Tonawanda Coke and Mark Kamholz, all
19 of the attorneys and parties are present.

20 We were supposed to start as close to 9:00 as
21 we could, and we'll get pretty close to that, I
22 think. But I guess the first issue to address is
23 the juror issue. It looks as if we're going to
24 have to move with Ms. Malyszka, who is alternate
25 number 1, to replace Mrs. Linda Finn. She's the

1 one that had the medical problem. This morning,
2 just a short time before 9:00 o'clock, she called
3 from her doctor's office, and she's getting a
4 doctor's note saying she cannot continue because of
5 the medical condition. If you recall, that had to
6 do with the medication issue and her driving.

7 I mean, she appeared to be trying, I think,
8 sincerely, but she was running the risk of
9 lightheadedness and blacking out and all that kind
10 of stuff because of her inability to take
11 medications early in the morning, and she couldn't
12 take them and drive the distance that she had to
13 drive. So I think we're going to have to move
14 Heather Malyszka up to become juror number 11. And
15 then Andrew Carlson and James Demmer will move up
16 to alternates, respectively, 1 and 2. Okay?

17 MR. PIAGGIONE: Yes, your Honor.

18 THE COURT: Okay. The other -- the other
19 matter is -- it won't take much time, but I did do
20 a little bit of work on our hypothetical question
21 issue. I don't know if anybody else did, but --

22 MR. LINSIN: We looked at it as well, your
23 Honor.

24 THE COURT: All right. Well, what did you
25 come up with? Because I've got a First Circuit

1 case and some Seventh Circuit cases, and basically,
2 you know, at least the way I've looked at it, you
3 know, the traditional hypothetical doctrine is
4 really limited to expert witnesses, but the
5 exception is you can do it with lay witnesses if
6 the hypothetical is geared to the specific personal
7 knowledge of the lay witness.

8 And they've used it in mail fraud cases,
9 financial fraud cases, and there was always that
10 one missing step that related to, you know, for
11 example, would you have engaged in the financial
12 reliance that you did with your adviser had you
13 known he or she was not forthcoming with certain
14 information. And because it was premised and based
15 in personal knowledge, the hypothetical was allowed
16 for the lay witness. And you have to weigh that
17 against -- as I read these cases, you have to weigh
18 that against speculation, unfair prejudice, I mean,
19 the kind of things we talked about yesterday.

20 So that's where I come out on this thing. So
21 it's not an outright prohibition, but it does fly
22 in the face a little bit of the traditional
23 doctrine as to hypothetical questions.

24 MR. LINSIN: Your Honor, that -- your
25 Honor's summary is consistent with what we looked

1 at as well, that there are occasional exceptions to
2 the general rule when the response to the
3 hypothetical would be based on personal knowledge
4 of the witness, as distinct from technical or
5 specialized training. That is what our research
6 suggested. So we did not brief the issue, but we
7 believe your Honor's summary is consistent with
8 where we saw the case law.

9 THE COURT: Okay. I think, and then most
10 expert witnesses, as we all know, I mean, it's a
11 specialized training and expertise and the like,
12 but in the majority of the cases I think the expert
13 witnesses don't have personal knowledge of most of
14 the facts that are presented for the rendering of
15 an expert opinion. So, I mean, that's a major
16 distinction, so --

17 MR. PIAGGIONE: Your Honor, I just point
18 out that yesterday we were talking about that,
19 that -- was saying if it was part of his personal
20 investigation and personal knowledge -- even though
21 they may have a specialized background, if it's
22 part of their personal investigation, that they're
23 allowed to testify, and I do --

24 THE COURT: Who's that?

25 MR. PIAGGIONE: There is a case involving

1 a police officer who did some accounting
2 evaluations, and he was allowed to give his opinion
3 based upon his specialized -- his personal
4 investigation of the documents, even though he may
5 have had specialized information. I can retrieve
6 that if --

7 THE COURT: Oh, you mean sort of it's a
8 hybrid. He's got personal knowledge, plus he's got
9 some expertise, so he kind of fits both molds?

10 MR. PIAGGIONE: Right. And they're
11 allowed to do that.

12 THE COURT: Yeah. I mean, it makes sense.
13 I don't want to give you too much credit,
14 Mr. Piaggione, but it does make some sense.

15 MR. PIAGGIONE: Sometimes I get carried
16 away.

17 THE COURT: Mr. Mango, you agree with
18 that?

19 MR. MANGO: Absolutely, your Honor.

20 THE COURT: All right. So you were on the
21 right track, Mr. Personius, after yesterday's
22 discussion, so --

23 MR. PERSONIUS: Is this on the record
24 again or not?

25 THE COURT: No. No. I would never do

1 that. You know that.

2 Okay. Anything preliminary that we have to
3 discuss?

4 MR. LINSIN: Your Honor, may I just have
5 one moment to consult with government counsel about
6 an issue I noticed in the notes? It will not
7 detain the Court. We can proceed to carry out. I
8 just want to --

9 THE COURT: Sure. No, absolutely.

10 MR. LINSIN: Thank you.

11 THE COURT: Miss Hamre, you want to come
12 back up and get ready?

13 (Discussion off the record.)

14 MR. LINSIN: We're ready.

15 THE COURT: Okay. Are you going to resume
16 cross-examination?

17 MR. LINSIN: Yes, please.

18 THE COURT: You want to stay there until
19 we get the jurors reseated?

20 And, Chris, you want to bring the jury in,
21 please.

22 And we will break by 3:45 this afternoon.

23 (Jury seated.)

24 THE COURT: All right. Good to see some
25 smiles on those faces this morning. Please have a

1 seat.

2 Okay. As you can tell -- and good morning,
3 everybody.

4 THE JURY: Good morning.

5 THE COURT: We got a little bit of
6 sunshine and brought that in. Unfortunately, it
7 wasn't enough to have Mrs. Finn come in. We're
8 going to excuse her, and as you know, she's juror
9 number 11. So a promotion is in order, and,
10 Miss Heather Malyszka, you become juror number 11.
11 And, gentlemen, you get elevated to alternate
12 number 1 and alternate number 2 respectively. So
13 we're going to probably have to negotiate your
14 contract with your agents and make sure that we
15 make the proper adjustment.

16 But, you know, it's unfortunate that that has
17 to happen, but that's why we have our alternates,
18 and that's why we talked to you about the
19 importance of your role. So we ask the alternates
20 to continue to focus, please. We don't want to
21 lose any other jurors, but we need to have backup
22 just in case the inevitable sometimes takes place,
23 so --

24 Okay. Everybody doing okay? All right.
25 You're ready for another day? All right. Okay.

1 We -- as you know, we're convened in the case of
2 United States versus Tonawanda Coke Corporation and
3 Mark Kamholz, the individual defendant.

4 And to repeat again, now that we have our new
5 juror for this -- substituting for our former
6 juror, you know, you will participate in the
7 deliberations. And I know you've been paying
8 attention, because I've been watching throughout
9 the course of the trial. And, you know, it takes
10 effort every day to stay with testimony, regardless
11 of the type of case it is, and in this case in
12 particular, as you know, it's pretty technical,
13 and, you know, it's in an area I guess for most of
14 us that we don't have a lot of familiarity with.

15 So, you know, we urge you to keep on working to
16 take this all in. I know you're engaged. I mean,
17 I -- if I don't look in your direction, I'm
18 watching you through the corner of my eye, so I
19 know that you're all, you know, taking note of the
20 testimony and watching your monitors, and that's
21 all very important, because this case is so
22 important to both sides.

23 And we're asking you to keep your minds open.
24 Wait until all of the evidence is in. I mean,
25 we've had a healthy start. We're not making a lot

1 of progress in terms of absolute numbers of
2 witnesses, but the essentials are to get the
3 evidence before you that's needed so that you can
4 make that unanimous decision in this case, you can
5 resolve those fact issues.

6 And you know how the case is broken down.
7 Those first 15 counts are clean air counts, and
8 violations are charged of the Clean Air Act are
9 criminal, and you have the obstruction of justice,
10 and then the last three counts are the
11 environmental RCRA statute. And so you have to
12 resolve fact issues that may relate to all of those
13 counts.

14 There may be some that, you know, really are
15 different than others, but you have to do the
16 analysis for each individual defendant on each
17 count, and you have to take a look at it in terms
18 of the essential elements that have to be proven by
19 the government beyond a reasonable doubt, and
20 always keeping in mind that the presumption of
21 innocence remains with the defendant -- defendants
22 at all times until proven guilty, if you so find.
23 And, you know, you get to that point when you do
24 your deliberating.

25 And again I stress to you the importance of

1 respecting each other and respecting each other's
2 views, and it really is very, very helpful to be in
3 a situation where you, as an individual juror, have
4 no reservations about expressing your views,
5 because, you know, sometimes it's a difficult thing
6 to do if individuals don't respect each other's
7 points of view. So, you know, work on that. Keep
8 that in mind. It's very important that you work
9 together. And, as you know, I mean, you represent
10 various sections of our community, and that's the
11 whole -- that's what our whole process is about.

12 So rather than go on too much longer, please
13 keep your minds open, restrict your consideration
14 to what you hear and see, observe, or are presented
15 with in this courtroom, the four walls of this
16 courtroom, and then work to apply common sense,
17 experience, and intelligence to the decision-making
18 process without bias, prejudice, sympathy. That's
19 basically the principles here. And it will all
20 come together. Just stay with us. And thank you
21 for your effort to date. We appreciate it.

22 Okay. We are actually getting an early start.
23 As you can see, we have Martha Hamre from the EPA
24 back on the stand. She remains under oath. She is
25 called as a government witness, but we're in

1 cross-examination by Mr. Gregory Linsin.

2 So, Mr. Linsin, if you want to continue,
3 please.

4 MR. LINSIN: Thank you, Your Honor.

5 M A R T H A E L I Z A B E T H H A M R E, having
6 previously been duly sworn as a witness, testified
7 further as follows:

8 CONTINUED CROSS-EXAMINATION BY MR. LINSIN:

9 Q. Good morning, Miss Hamre.

10 A. Good morning.

11 Q. Miss Hamre, you testified yesterday that you
12 were the project manager from NEIC for this
13 inspection at the Tonawanda Coke facility in April
14 of 2009, correct?

15 A. Correct.

16 Q. Does that mean that you were in charge of that
17 on-site inspection on behalf of NEIC?

18 A. Yes.

19 Q. And was this the first time you had ever served
20 as a project manager for a site inspection?

21 A. No.

22 Q. How many times before April of 2009 had you
23 been the project manager for the inspection?

24 A. I don't have that number right now.

25 Q. More than ten?

1 A. A number of times. But I don't -- I would want
2 to look through my files to give a number.

3 Q. So you've had experience in doing this as the
4 project manager before, correct?

5 A. Yes.

6 Q. Now, when you traveled to Buffalo to begin this
7 inspection in April of '09, did you bring with you
8 copies of documents from the facility's air
9 inspection file?

10 A. I brought a copy of the permit and maybe some
11 of the background initial notifications pertaining
12 to the sections of -- of the inspection we were
13 looking at.

14 Q. Now, you testified yesterday that the -- this
15 was not a multimedia inspection, this was an air
16 inspection of this facility, correct?

17 A. Correct.

18 Q. And if I heard you correctly, you testified
19 that it was an inspection that was intended to
20 focus on NESHAPS, N-E-S-H-A-P-S, operations and
21 also potential benzene sources from the by-products
22 area, is that correct?

23 A. Yes, that was the focus.

24 Q. All right. So you also testified yesterday
25 that before beginning the inspection you had

1 reviewed the air emissions summary, the HAPS air
2 emissions summary that the facility had prepared
3 in 2003, do you recall that?

4 A. Yeah, I recall that -- the name of that
5 document.

6 Q. All right. Did you have a copy of that
7 document with you as you began your inspection on
8 April 14th, 2009?

9 A. I don't recall.

10 Q. All right. You knew from that document,
11 though, didn't you, that in that document, when it
12 summarized the vents and components in the
13 by-products area, that the -- the facility had
14 reported that there was a pressure-relief valve in
15 the by-products area, didn't you?

16 A. No.

17 Q. You had not noticed that in your review of the
18 document?

19 A. No.

20 Q. Did you review that document in more than a
21 cursory manner?

22 A. No.

23 Q. This was an inspection focused on potential
24 benzene releases and NESHAP waste operations, and
25 your testimony is that you only reviewed that HAPS

1 air emissions study in a cursory fashion before you
2 began the inspection, is that correct?

3 A. Yes.

4 Q. You arrived at Tonawanda Coke's facility on
5 April 14th, in the morning, of 2009, is that
6 correct?

7 A. Yes.

8 Q. And you and your colleagues were on-site at the
9 facility -- the 14th, I believe you testified, was
10 a Tuesday, correct?

11 A. Correct.

12 Q. And so you were on-site that Tuesday, that
13 Wednesday, that Thursday, and that Friday, four
14 days that week, correct?

15 A. Correct.

16 Q. And then the first two days of the following
17 week, the 20th and the 21st of April, correct?

18 A. Yes.

19 Q. All right. So six days altogether at the site,
20 correct?

21 A. Correct.

22 Q. Now, you were shown quite a number of
23 photographs yesterday, during your direct
24 examination, of components that you had taken
25 pictures of in the by-products area, correct?

1 A. Correct.

2 Q. And out of the six days that you were there
3 on-site, how many days were you actually in the
4 by-products area?

5 A. Probably pieces of all six. I'd have to check
6 my notes to be sure.

7 Q. All right.

8 MR. LINSIN: Your Honor, if I may call up
9 a document that has been marked for identification,
10 Defendant's Exhibit quadruple H, and absent
11 objection, would move this document into evidence.

12 MR. MANGO: No objection, your Honor.

13 THE COURT: Okay.

14 MR. PERSONIUS: No objection, Judge.

15 THE COURT: All right. Quadruple H
16 received, no objection. And do you want it
17 published?

18 MR. LINSIN: Yes, I would like it
19 published, please, your Honor.

20 THE COURT: All right. And it may be
21 published, Miss Henderson.

22 (Defendant's Exhibit HHHH was received
23 into evidence.)

24 THE COURT: You've got the exhibit ready
25 to go? Okay.

1 MR. LINSIN: It's up?

2 THE COURT: It's up.

3 BY MR. LINSIN:

4 Q. All right. Can we please enlarge the -- this
5 area.

6 Now, I don't believe you -- well, have you seen
7 this drawing before, Miss Hamre?

8 A. No, I don't believe so.

9 Q. All right. I just ask you to take a minute and
10 orient yourself if you can. Do you -- and ask
11 whether you recognize this as a diagram depicting
12 the location of the coke oven battery, the
13 coal-handling building, and the by-products area at
14 the Tonawanda Coke facility.

15 A. It appears to be the Tonawanda Coke facility.

16 Q. All right. And if you would take note of the
17 colored lines on this drawing, the blue lines
18 coming from the coke oven battery into the
19 by-products area and then the green line moving
20 from the by-products area to the right-hand -- in
21 the right-hand direction to the boiler house and
22 back to the coke ovens, do you recognize that as a
23 depiction of the location of the coke oven gas line
24 at the facility?

25 A. As best I can tell. I mean, things may have

1 changed.

2 Q. Let me ask it this way. Is this depiction of
3 those colored lines consistent at least with your
4 memory of the location of the coke oven gas line at
5 the Tonawanda Coke facility?

6 A. I believe so.

7 Q. All right. And the components that are
8 identified -- I'm going to -- components that are
9 identified in this general location in the
10 drawing -- the light oil scrubber, the ammonia
11 scrubbers, the tar precipitator, the exhausters,
12 and the two cooler stacks -- were all of those
13 components ones you identified pictures of
14 yesterday and inspected during the course of your
15 inspection at the facility?

16 A. Can you go through the list again?

17 Q. The light oil scrubber, the ammonia scrubber,
18 the tar precipitator, the exhausters, and the two
19 cooling stacks.

20 A. Those were things we looked at, although there
21 weren't three exhausters while we were there.

22 Q. How many exhausters were there?

23 A. Two.

24 Q. All right. Now, what was the first day -- of
25 the six days, what was the first day you went to

1 the by-products area?

2 A. Which day did we go the first time?

3 Q. The first time.

4 A. On the 14th.

5 Q. Okay. What did you do there on the 14th in the
6 by-products area?

7 A. It was more of a plant tour just to give us a
8 lay of the land, try to see what equipment was --
9 what the physical equipment looked like.

10 Q. And you were back to the by-products area the
11 next day on the 15th, correct?

12 A. Yes.

13 Q. All right. And as a matter of fact, during the
14 course of your six days there you and your
15 colleagues took not only photographs in the
16 by-products area, but you took quite a number of
17 samples from the containment areas you described
18 and other locations in the by-products area,
19 correct?

20 A. Yes.

21 Q. Now, on the 15th, so this would be Wednesday,
22 do you recall having a conversation with Patrick
23 Cahill, the by-products foreman?

24 A. I recall him assisting in our sampling.

25 Q. Would it assist you to make reference to your

1 notes from that day?

2 A. Yes.

3 MR. LINSIN: Your Honor, may we please
4 have exhibit -- Government's Exhibit 3527.21 marked
5 for identification. And ask if we could turn to --
6 well, turn to what is 010, page 010.

7 THE COURT: Okay. We will mark for
8 identification 3527.21.

9 BY MR. LINSIN:

10 Q. Now, what I'm going to ask, Miss Hamre, if you
11 can just read to yourself or review the notes on
12 the left-hand side of this page, and once you've
13 finished reviewing it, I'm going to ask you the
14 same question: Whether you have a recollection of
15 having spoken to Mr. Cahill on the 15th.

16 All right. Having reviewed these notes, do you
17 now have a recollection of having spoken to Patrick
18 Cahill, the by-products foreman, on April 15th of
19 2009?

20 A. Yes.

21 Q. All right. And you were speaking to Mr. Cahill
22 about certain components in the by-products area,
23 correct?

24 A. Yes. The ammonia stripper.

25 Q. All right. And how long did you stay in the

1 by-products area that day?

2 A. I don't have an exact time.

3 Q. Was it most of the day?

4 A. I'd say at least half the day.

5 Q. All right. And if we could remove this now,
6 and recall Defendant's Exhibit quadruple H now in
7 evidence, please. And if we could highlight that
8 same upper right quadrant.

9 Do you recall where else you went on the 15th
10 other than the by-products area?

11 A. No.

12 Q. Did you go back to the by-products on the 16th?

13 A. I believe so.

14 Q. All right. And do you recall whether you spoke
15 to Mr. Cahill on the 16th?

16 A. I don't recall.

17 Q. Are how long did you spend in the by-products
18 area on April 16th, 2009?

19 A. Offhand, I'm not sure. Possibly half a day.

20 Q. All right. And then you went back to the
21 by-products area on the 17th, that Friday, correct?

22 A. Yes.

23 Q. And your testimony yesterday was that the first
24 time you noticed a release of the pressure-relief
25 valve on the coke oven gas line was that Friday,

1 the 17th, correct?

2 A. Yes.

3 Q. And your testimony was that you asked
4 Mr. Kamholz a question about the line and he said
5 you should speak to Pat Cahill, correct? I'm
6 sorry. A question about the pressure-relief valve.

7 THE COURT: Okay. Put the question again.

8 MR. LINSIN: I'm sorry. My apology, your
9 Honor.

10 BY MR. LINSIN:

11 Q. You testified yesterday that when you saw this
12 pressure-relief valve release on the 17th, that you
13 asked Mr. Kamholz about the valve, correct?

14 A. No.

15 Q. All right. What did you do when you saw the
16 valve release?

17 A. I spoke to my colleague, Ken Garing.

18 Q. Why didn't you just ask Mr. Kamholz?

19 A. I wanted to show it to the other -- my other
20 colleague at the time. Mr. Kamholz was up in front
21 of us.

22 Q. All right. Did you speak to Mr. Sitzman about
23 it, from DEC?

24 A. I don't recall.

25 Q. Did you speak to Cheryl Webster about it, from

1 DEC?

2 A. I don't recall. I don't even know if they were
3 there on Friday.

4 Q. After talking to Mr. Garing about it, what did
5 you do?

6 A. We were doing monitoring that day. I don't
7 recall when exactly Mr. Garing asked Mr. Kamholz
8 about the PRV, but some time that morning.

9 Q. I see. So you didn't ask Mr. Kamholz a
10 question. It was Mr. Garing that asked Mr. Kamholz
11 a question, is that correct?

12 A. Correct.

13 Q. All right. And it wasn't right away, it was
14 later in the morning after you had seen it release?

15 A. I don't remember when it was.

16 Q. Did you make any record of that discussion
17 about the PRV on April 17th in your notes?

18 A. No.

19 Q. You've been trained to record important events
20 in the notes during the course of an inspection in
21 a facility, haven't you?

22 A. Yes.

23 Q. As a matter of fact, you took quite voluminous
24 notes of this weeklong inspection at Tonawanda
25 Coke, didn't you?

1 A. Yes.

2 Q. Do you know what the standard operating
3 pressure is for the coke oven gas line at Tonawanda
4 Coke facility?

5 A. I know what range I was given.

6 Q. And what range was that?

7 A. 100 to 150 centimeters of oil.

8 Q. And who gave you that range?

9 A. Mr. Cahill.

10 Q. And is your recollection clear about that?

11 A. Yes.

12 Q. Are you aware that there are a number of
13 factors that influence the changes in the coke oven
14 gas line pressure at a facility -- at this
15 facility?

16 A. Yes.

17 Q. Are you aware that those factors can include
18 production levels, requests from the battery,
19 whether or not the facility is in cogeneration
20 status? Are you aware of all those factors?

21 A. Not all of them, but some.

22 Q. Were you aware that this facility at the time
23 of the inspection was in cogen status; that is,
24 generating its own electricity through the burning
25 of coke oven gas?

1 A. No, I don't recall that.

2 Q. Did you inquire about that while you were
3 there?

4 A. I don't remember.

5 Q. Do you think it might have been an important
6 factor, in assessing the facility's consumption of
7 coke oven gas, for you to know that this facility
8 at the time of this inspection was burning coke
9 oven gas to generate the electricity for the entire
10 facility?

11 MR. MANGO: Objection, your Honor. It
12 seems like he's testifying in that question.

13 THE COURT: Overruled.

14 THE WITNESS: Can you say that again,
15 please?

16 MR. LINSIN: Yeah. Can you agree that it
17 would have been an important thing for you to
18 understand that at the time of your inspection of
19 April 2009 that Tonawanda Coke was in cogeneration
20 status; that is, burning coke oven gas to generate
21 the electricity for the entire facility?

22 MR. MANGO: Objection, your Honor.
23 Assuming facts not in evidence. There's no
24 evidence that this facility was in cogeneration
25 status. The way the question is being asked

1 indicates that it was. There is no evidence to
2 that effect. I bring that to the Court's
3 attention.

4 THE COURT: Mr. Linsin?

5 MR. LINSIN: We will be -- I believe the
6 government is aware that this evidence will clearly
7 be linked up with subsequent witnesses. I don't
8 believe there is any genuine dispute about the
9 premise of the question that's been posed to this
10 witness.

11 THE COURT: Mr. Mango, is there?

12 MR. MANGO: We don't believe that's the
13 case, your Honor. We haven't been proffered any
14 evidence by the defense that they were in
15 cogeneration.

16 THE COURT: I'll sustain your objection.

17 MR. PERSONIUS: Your Honor, may I just
18 point something out to Mr. Linsin, or is that not
19 permissible?

20 THE COURT: No, sure. Go ahead.

21 MR. PERSONIUS: Thank you, Judge.

22 MR. LINSIN: Could I please ask that
23 Government Exhibit 3527.21 marked for
24 identification be called back up, and go to
25 page 018.

1 BY MR. LINSIN:

2 Q. Now, Miss Hamre, I'm going to ask you again to
3 read silently to yourself the notes that appear on
4 the bottom right-hand portion of this page, and I'm
5 going to pose the same question to you that I asked
6 a moment ago, and that is whether you were aware
7 that at the time of your inspection this facility
8 was in cogeneration status.

9 Having read those notes, Miss Hamre -- and
10 these are your notes, correct?

11 A. Correct.

12 Q. Having read those notes, does that refresh your
13 recollection as to whether you knew that at the
14 time of your inspection of the Tonawanda Coke
15 facility in April 2009 it was in cogen status?

16 A. No.

17 THE COURT: Is it your answer that it
18 doesn't refresh your recollection? Is that what
19 you're saying?

20 THE WITNESS: It does refresh my
21 recollection, but the -- what I read doesn't answer
22 whether or not they were in cogen at the time.

23 THE COURT: Okay.

24 BY MR. LINSIN:

25 Q. Does it refresh your recollection that you had

1 a conversation with the personnel at Tonawanda Coke
2 about cogeneration and the maximum megawattage that
3 the facility produced while it was in cogeneration?

4 A. Yes.

5 Q. Now, you testified yesterday regarding the -- a
6 number of the circular charts that were -- copies
7 of which were provided to you at the end of your
8 inspection, correct?

9 A. Correct.

10 Q. Now, before this inspection had you had
11 experience in reviewing, reading, or interpreting
12 circular charts similar to the ones you received
13 from Tonawanda Coke?

14 A. I have seen circular charts before. I don't
15 recall what they were recording.

16 Q. All right. May I please have Government's
17 Exhibit 20.05 that is in evidence, please. Now,
18 and if we could, is it possible to enlarge just the
19 chart itself? Okay.

20 You testified a moment ago that you were
21 informed that -- by Mr. Cahill that the operating
22 line pressure at Tonawanda Coke for the coke oven
23 gas line was between 100 and 150. Do I recall that
24 testimony correctly?

25 A. Correct.

1 Q. All right. Now, as you look at this, the
2 readings on this circular chart -- and you have
3 looked at these readings, correct?

4 A. Yes.

5 Q. All right. You see readings -- do you see
6 readings on the right-hand side of this, this
7 particular chart, in a range down to 70 centimeters
8 of oil?

9 A. Somewhere in that area, yes.

10 Q. And just so that we're talking about the same
11 direction, do you see this -- the recording just
12 above the point of the arrow that I've just made
13 there, indicating a reading in the 70s at about
14 some time, what would be after 11:00 a.m. that day?

15 A. I see about 70.

16 Q. All right. And do you also see peaks in that
17 same general vicinity on this drawing that go up to
18 approximately 130 in that location?

19 A. Yeah, it looks like 120 to 140 peaks kind of in
20 that side of the chart.

21 Q. All right. Varying peaks, correct?

22 A. Correct.

23 Q. Do you see any peaks on this drawing that get
24 up to 150?

25 A. Part of the drawing is cut off on the right

1 there, so I can't tell for about a quarter of the
2 time. But the time I can see, I don't see anything
3 above 150.

4 Q. And you see quite a number of readings below
5 100, correct?

6 A. Right at 100 or below. Looks like this whole
7 half is 100 or a little above.

8 Q. The left-hand side is in -- in the hundred
9 range. The right-hand side has quite a number of
10 readings below 100 down into the 80-and-below
11 range, correct?

12 A. It has some, yes.

13 Q. Well, Miss Hamre -- I'm going to draw this line
14 there. That arc of this graph reflects pressure
15 readings below 100 on a consistent basis, doesn't
16 it?

17 A. It's fluctuating. Some are above and some are
18 below, so --

19 Q. Maybe my question wasn't clear. Yes, it is
20 fluctuating along that arc. But the fluctuations
21 include many readings below 100, correct?

22 A. Yes.

23 Q. All right. So is it fair to say, at least from
24 this one example, that the operating range for this
25 day for the coke oven gas line -- the operating

1 pressure range was between 80 and 130 or
2 thereabouts?

3 A. That's what it looks like.

4 Q. All right. So you knew, just based on your
5 review of even this one chart, that the estimate of
6 100 to 150 centimeters of pressure was not an
7 accurate estimate, correct?

8 A. No.

9 Q. And why is that?

10 A. It was a range. I -- this is one day out of a
11 year, so it could be or it couldn't be.

12 Q. Did you ask for any other data other than the
13 charts you were brought -- that you were given at
14 the end of the week?

15 A. No.

16 Q. And, by the way, did you ask about the
17 background of this valve when you were there during
18 your inspection?

19 A. I don't recall.

20 Q. Did you ask when it was installed?

21 A. I don't recall.

22 Q. Now, I'm not sure I heard your testimony
23 yesterday correctly, but I thought I heard you
24 testify that the readings on this chart, the spikes
25 on this chart, if -- if the spikes went above the

1 set point for the pressure-relief valve, that that
2 spike would indicate a release of coke oven gas.

3 Did I hear your testimony correctly?

4 A. Yes.

5 Q. All right. Now, are you aware, Miss Hamre,
6 that it is physically impossible for the pressure
7 gauge that generates this circular chart for this
8 pressure gauge to record a pressure that exceeds
9 the setting on the pressure-relief valve?

10 MR. MANGO: Objection, your Honor. Are
11 you aware that it's physically impossible.
12 That's -- that's not a proper question, your Honor,
13 in that it assumes evidence that's not -- or facts
14 not in evidence, your Honor.

15 THE COURT: It may well be, unless there
16 is a foundation for it. Objection sustained.

17 BY MR. LINSIN:

18 Q. Do you know where the pressure recorder was
19 that generated this circular chart? Where on the
20 coke oven gas line?

21 A. No.

22 Q. Did you ask?

23 A. Not that I recall.

24 Q. Do you know how close it was to the
25 pressure-relief valve itself?

1 A. No.

2 Q. If a pressure-relief valve -- or your
3 understanding was the pressure-relief valve on this
4 line opened at a certain pressure, correct?

5 A. Correct.

6 Q. And it wouldn't close until the pressure fell
7 below that set point, correct?

8 A. I believe so.

9 Q. And so given that operation that you've just
10 described, the pressure in the line couldn't exceed
11 the set point for the valve, correct?

12 A. No.

13 Q. Can you explain that answer?

14 A. It may -- there may be a delay time for the
15 valve to open. I don't have all the particulars.

16 Q. You said there may be. And so you're guessing?

17 A. Yes.

18 MR. MANGO: Objection, your Honor, to
19 characterizing this as guessing.

20 THE COURT: It's been asked and answered.

21 BY MR. LINSIN:

22 Q. And you testified that you didn't inquire where
23 the pressure gauge was that generated these
24 circular charts, correct?

25 A. Not the exact location, no.

1 Q. Now, you testified yesterday, Miss Hamre, that
2 after speaking to Mr. -- after Mr. Garing spoke to
3 Mr. Kamholz on the 17th, that you then spoke to
4 Mr. Cahill about the pressure-relief valve on the
5 21st, is that correct?

6 A. Yes.

7 Q. Now, is your memory clear about that?

8 A. Yes.

9 Q. And so between the time you saw this valve
10 release on the 17th and the time you talked to
11 Mr. Cahill on the 21st, the last day of your
12 inspection, you didn't receive any additional
13 information about this valve, correct?

14 A. No.

15 Q. You did receive additional information?

16 A. Yes.

17 Q. All right. From where did you receive this
18 additional information?

19 A. There's a notation in my logbook. I don't
20 recall who gave me the information.

21 Q. All right. In fact -- and when you say your
22 logbook, you mean the notes that you took during
23 this inspection, correct?

24 A. Yes.

25 Q. And, in fact, your notes reflect that on

1 April 20th, that Monday, you received from someone
2 specific information about the operation of this
3 valve. You even drew a diagram of the valve in
4 your notes on the 20th, correct?

5 A. Correct.

6 Q. And your testimony is that you don't remember
7 who gave you that information?

8 A. Correct.

9 Q. It would have been someone from Tonawanda Coke,
10 correct?

11 A. Yes.

12 Q. In the course of your inspection at Tonawanda
13 Coke in April of '09, did you come to learn who was
14 responsible for setting the set point for the PRV
15 in the by-products area at that facility?

16 A. No.

17 Q. Did you ask?

18 A. No.

19 Q. There is a -- there was a by-products logbook
20 in the by-products area at the time of your
21 inspection. Did you examine that logbook?

22 A. I did not see a logbook.

23 Q. Were you aware that there was a logbook in the
24 by-products area that recorded changes in the set
25 point for the pressure-relief valve?

1 A. No.

2 Q. Now, if we could just pull this exhibit down,
3 please.

4 You were shown yesterday Government Exhibit
5 number 70, which you may recall, Miss Hamre, was
6 your process flow diagram that you created after
7 the conclusion of the inspection.

8 Well, actually, could we please call that back
9 up, Government Exhibit 70, which is in evidence.
10 And if we could enlarge the -- just that portion.
11 Thank you.

12 Now, this is a drawing you created after your
13 inspection, correct?

14 A. Yes.

15 Q. And the pressure-relief valve that we've been
16 discussing is up in this right-hand corner,
17 correct?

18 A. Yes.

19 Q. And it's depicted by two triangles in that
20 portion of the line, correct?

21 A. Yes.

22 Q. And that's a traditional symbol for a valve in
23 a line such as that, is that correct?

24 A. I believe so.

25 Q. All right. Now, the other vessels that are in

1 this, especially this top part of this drawing
2 where -- with the dotted lines, which you testified
3 was where the coke oven gas flowed, correct?

4 A. Which vessels?

5 Q. I'm sorry. I was referencing all the vessels
6 of the top portion of this drawing through which
7 the dotted line travels as you move from left to
8 right.

9 A. Yes.

10 Q. Those are all components in the -- say, for the
11 coke oven battery at the far left, those are all
12 components in the by-products area, correct?

13 A. Yes.

14 Q. Now, those components have -- a number of these
15 components that are on your drawing have vents and
16 valves that are not depicted in your drawing,
17 correct?

18 A. Yes.

19 Q. Vents and valves that if you were going to be
20 doing a more detailed drawing, you would need to
21 include those, correct?

22 A. Correct.

23 Q. So this is a -- a more general drawing to
24 convey what you believe to be the important
25 elements for your focus in the by-products area,

1 correct?

2 A. Yes.

3 Q. But those vents and valves that are not on your
4 drawing were also the subject of your inspection,
5 were they not?

6 A. Correct.

7 Q. Those being vents and valves that are required
8 periodically to be monitored for possible leaks,
9 correct?

10 A. Yes.

11 Q. But you didn't include those in your drawing?

12 A. No.

13 Q. If we can pull this down, please.

14 During the course of your inspection at the
15 Tonawanda Coke facility in April of 2009, did you
16 talk to the personnel at the facility about their
17 handling of coal tar sludge?

18 A. What do you mean by handling?

19 Q. Whether it was recycled or not.

20 A. It was discussed.

21 Q. All right. And did you learn through your
22 inspection that the facility was recycling the coal
23 tar sludge from the decanter tank in the
24 by-products area?

25 A. Yes.

1 Q. Now I'd like to go back -- oh, before we leave
2 the by-products area, you testified yesterday that
3 you learned, I believe, that at the time of your
4 inspection of April 2009 that the light oil system
5 at the plant was not in operation, correct?

6 A. Yes. All but the light oil column where gas
7 was still flowing through.

8 Q. But -- but that column wasn't at that time
9 removing the light oil from the gas stream,
10 correct?

11 A. That was how it was explained to us, yes.

12 Q. And did you ask why the light oil scrubber had
13 been shut down at that point?

14 A. No.

15 Q. I'd like to turn your attention, please, to the
16 closeout meeting that you and your colleagues had
17 with the -- with Mr. Kamholz and, I believe you
18 testified, Mr. Trembowicz from Tonawanda Coke on
19 April the 21st. You testified yesterday that -- on
20 direct examination, that at that closeout meeting
21 on the 21st that you did not make any comment to
22 Mr. Kamholz or anyone else as to whether this
23 pressure-relief valve was a violation of the
24 facility's Title V permit, correct?

25 A. Correct.

1 Q. All right. There were two DEC personnel
2 present at that closeout meeting as well, correct?

3 A. Correct.

4 Q. And their names again, please?

5 A. Larry Sitzman and Cheryl Webster.

6 Q. And Mr. Sitzman at the time was the regional
7 air pollution engineer for DEC for Region 9,
8 correct?

9 A. I don't know.

10 Q. You understood him -- you testified yesterday
11 you understood him to be one of the people who had
12 been directly involved at inspections -- in
13 inspections at this facility, correct?

14 A. Yeah.

15 Q. And Miss Webster, as well, had been involved in
16 inspections of this facility on behalf -- air
17 inspections on behalf of DEC, correct?

18 A. I believe she was just starting to inspect the
19 facility.

20 Q. Now, my question is: During this closeout
21 meeting, when the pressure-relief valve was
22 discussed, did either Mr. Sitzman or Miss Webster
23 give any instructions to Mr. Kamholz or anyone else
24 at the plant that this pressure relief needed to be
25 blanked off or that they needed to do something to

1 amend their Title V permit with respect to this
2 pressure-relief valve?

3 A. No.

4 Q. As a matter of fact, the only thing that was
5 discussed at this closeout meeting, after a
6 weeklong inspection, was a request on the part of
7 your team for the facility to explore whether they
8 could raise the set point for the pressure-relief
9 valve, isn't that true?

10 A. One item.

11 Q. Was there anything else discussed about the
12 pressure-relief valve at the closeout meeting other
13 than what I just said?

14 A. Not that I recall.

15 Q. And if there was anything else significant
16 discussed, you would have recorded it -- regarding
17 the pressure-relief valve, you would have recorded
18 it in your notes, correct?

19 A. Not necessarily.

20 Q. You drafted a report of your inspection in
21 September of 2009, five months after the inspection
22 itself, correct?

23 A. It was being drafted prior to September.

24 Q. Fair enough. Your report on this inspection
25 was finalized and signed in September of 2009,

1 correct?

2 A. No.

3 Q. When was it finalized and signed?

4 A. October of 2009.

5 Q. Thank you for that correction. Now, in this
6 report -- and it -- it goes on for about 14 pages.

7 Is that a fair statement?

8 A. Yes.

9 Q. You summarized your findings, correct?

10 A. Correct.

11 Q. You identify certain areas that you term to be
12 areas of noncompliance, correct?

13 A. Correct.

14 Q. And then after that, at the very end of your
15 report you also identify a few additional areas
16 which you identify as areas of concern, correct?

17 A. Yes.

18 Q. And as a matter of fact, the pressure-relief
19 valve that we've been discussing this morning is
20 the very last item listed in your inspection
21 report, correct?

22 A. Correct.

23 Q. And it is in the section of your report
24 regarding areas of concern, correct?

25 A. Yes.

1 Q. Not areas of noncompliance, correct?

2 A. Correct.

3 MR. LINSIN: I have nothing further, your
4 Honor.

5 THE COURT: Okay, Mr. Linsin. Thank you.
6 Mr. Personius?

7 CROSS-EXAMINATION BY MR. PERSONIUS:

8 Q. Good morning, Miss Hamre.

9 A. Morning.

10 Q. I don't think we've met. We've seen one
11 another. But I'm Rod Personius, and I represent
12 Mark Kamholz. It's nice to meet you.

13 A. Nice to meet you.

14 Q. Could you tell us, please, what steps you took
15 to prepare to testify during this trial?

16 A. I reviewed my notes, I spoke with my attorneys,
17 I looked at other documents that we had gotten
18 while on-site, and I looked at photographs.

19 Q. When you say you reviewed your notes, that's
20 the -- the notes that Mr. Linsin referred to?

21 A. Correct. My -- what I call my logbook.

22 Q. Sure. Okay. And -- and when you describe this
23 document as a logbook, what does it -- what does it
24 look like?

25 A. It's black. It's a bound book. It's smaller

1 than a regular sheet of paper. I don't know the
2 exact measurements.

3 Q. I from time to time date myself because I hate
4 to admit how old I'm getting, but back in -- when I
5 was in high school, you would from time to time get
6 these books that were black, and you'd open it up,
7 they had lined paper in them, and they had like a
8 string or something that was kind of the binder for
9 it so it was hard to rip pages out. Is that the
10 kind of book you're referring to?

11 A. Yes.

12 Q. And is that the type of book that you always
13 use when you do these types of inspections?

14 A. Yes.

15 Q. Is there a reason you use that type of a -- a
16 document?

17 A. To keep all our notes in one location.

18 Q. Okay. So that you don't -- if you lose -- if
19 you lose -- if you use something like I'm holding
20 up, a yellow pad, there is a risk that pages could
21 get torn off, and the advantage of the type of book
22 that you use is everything stays in one place?

23 A. Yes. Unless you lose the whole book, I guess.

24 Q. Sure. And the reason that you do that is
25 because what you put in to this book is what during

1 that inspection was important to you, right?

2 A. Yes.

3 Q. All right. And I notice that you testified in
4 response to questions by Mr. Linsin that there were
5 certain events that occurred that didn't find their
6 way into this bound logbook that you maintained
7 during that weeklong inspection in April of 2009,
8 true?

9 A. Yes.

10 Q. All right. And I think one -- probably the
11 most salient or the example that stands out the
12 most is your initial discovery or observation of
13 that pressure-relief valve in the by-products area.
14 Would that be true?

15 A. What was the question again?

16 Q. Let me repeat. I apologize for not being
17 clear. One example that stands out of an event
18 that didn't find its way into your logbook was your
19 discovery of this pressure-relief valve in the
20 by-products area on April 17th, 2009.

21 A. Yes.

22 Q. And was the reason that that didn't find its
23 way into your logbook, because you overlooked
24 putting it in your logbook or because you made a
25 decision that that didn't need to be put in your

1 logbook?

2 A. Because there was no discussion regarding the
3 pressure-relief valve at that time.

4 Q. By "at that time," you mean when you discovered
5 the pressure-relief valve on Friday, April 17th,
6 2009, true?

7 A. Yes. Mr. Kamholz couldn't answer our
8 questions, and we were doing other pieces of the
9 inspection at that time.

10 Q. All right. So there was a conversation at that
11 time with Mr. Kamholz, true?

12 A. Yes.

13 Q. And you've testified here in court about that
14 conversation with Mr. Kamholz, true?

15 A. Yes.

16 Q. And certainly you'd agree, would you not, that
17 as your testimony has gone along that's been a
18 point of emphasis, that Mr. Kamholz did not provide
19 information immediately about that pressure-relief
20 valve, true?

21 A. Yes.

22 Q. But it's not in your logbook?

23 A. No.

24 Q. And you say the reason it's not in your logbook
25 is because it wasn't discussed at that point, is

1 that correct?

2 A. Yes.

3 Q. Now, when you had that -- I guess as long as
4 we're talking about that, why don't we go to that
5 right now. You're in the by-products area on
6 April 17th, and you observe this pressure-relief
7 valve go off or release?

8 A. Yes.

9 Q. All right. At the time that that happens, do
10 you remember if it's morning or afternoon?

11 A. My recollection is morning.

12 Q. Do you remember what time in the morning?

13 A. No.

14 Q. Was there anybody present with you when the --
15 the pressure-relief valve released?

16 A. Yes.

17 Q. Would you tell the jury, please, who else was
18 with you?

19 A. Mr. Kamholz was escorting us out into the
20 facility. Mr. Garing from my office, and the
21 Region 2 inspectors, Harish Patel, Mozey Ghaffari
22 and Richard Kan, and there could have been others.
23 Those are who I recall.

24 Q. And am I correct in understanding that at the
25 time the PRV released, this group that you've

1 identified were all together?

2 A. Not -- we were walking maybe in rows, but sort
3 of as a group going out there.

4 Q. So it was as you were walking to the
5 by-products area?

6 A. As I recall, yes.

7 Q. And do you remember where you were when you
8 observed the PRV release?

9 A. Somewhere on the -- what I think you guys
10 called Broadway or whatever the road is between the
11 coke battery itself and the by-products area.

12 Q. Okay. And do you remember specifically where
13 you were on that roadway?

14 A. Not specifically.

15 Q. All right. And did you see the valve release
16 one time or more than one time?

17 A. At that time?

18 Q. Yes.

19 A. Once.

20 Q. Okay. And so you observed the pressure-relief
21 valve release one time, correct?

22 A. Yes.

23 Q. And your testimony, as I understand it, is, up
24 to that point in time you did not know that this
25 device existed in the by-products area, correct?

1 A. Correct.

2 Q. All right. And once you observed that -- that
3 release, I think your testimony is you conferred
4 with Mr. Garing?

5 A. Yes.

6 Q. And again Mr. Garing is your associate who came
7 from Denver with you for this inspection?

8 A. Yes.

9 Q. And is Mr. Garing in some sense your
10 supervisor?

11 A. No.

12 Q. Are you coequals in terms of your position with
13 your office in Denver?

14 A. Yes.

15 Q. All right.

16 A. He's more senior than I.

17 Q. Okay. But not your supervisor?

18 A. No.

19 Q. Now, did you -- did you talk to anybody else at
20 that point other than Mr. Garing?

21 A. Not that I recall.

22 Q. You recall your conversation was just with
23 Mr. Garing?

24 A. Yes.

25 Q. All right. And did you step aside to have this

1 discussion?

2 A. It was as we were walking along, as I recall.

3 Q. All right. And do you know from that
4 conversation if Mr. Garing also observed this PRV
5 release?

6 A. I believe he did.

7 Q. Okay. What's your basis for saying that you
8 think he did?

9 A. Because he turned, and we were looking up, and
10 I saw it, so I think he did, but --

11 Q. And can you share with the jury, please, what
12 you remember about what you said to Mr. Garing and
13 what he said to you after you both had seen the
14 this PRV release?

15 A. I don't recall exactly the conversation.

16 Q. Well, you certainly would have a recollection
17 of the substance of that conversation, true?

18 A. Yeah.

19 Q. Okay. Could you share what you remember --

20 A. I think --

21 Q. Pardon me. Let me finish so we have a -- just
22 so we have a clean record. I don't mean to cut you
23 off.

24 Could you share with the jury, please, what you
25 do recall about that conversation you had with

1 Mr. Garing?

2 A. Something to the effect, "Ken, look at the pipe
3 on the coke oven gas line. It's -- there's a --
4 it's relieving emissions. What do -- do we know
5 what that is?"

6 Q. All right. And did Mr. Garing respond?

7 A. I'm sure he did. I don't remember what his
8 response was.

9 Q. Okay. You may not remember every word that he
10 used, but you certainly have some recollection
11 about the substance of what Mr. Garing said in
12 response, don't you?

13 MR. MANGO: Objection, your Honor. She
14 said she didn't remember. If we get into the
15 substance, I think that is hearsay.

16 THE COURT: No. I'll permit it.

17 THE WITNESS: I think he said something
18 like, "We'll have to check into that."

19 BY MR. PERSONIUS:

20 Q. All right. And was there any further
21 discussion at that point with Mr. Garing?

22 A. No. Because we were heading out to monitor.
23 We -- Mr. Garing had monitoring equipment. We were
24 trying to stick to our schedule.

25 Q. Okay. So at that point in time it was more

1 important that you stick to your schedule than that
2 you discuss with Mr. Kamholz this pressure-relief
3 valve that you testify you had just discovered, is
4 that true?

5 A. No.

6 Q. You made a decision to go ahead with your
7 schedule at that point rather than talk immediately
8 to Mr. Kamholz, true?

9 A. Yes.

10 Q. And you did that because it was more important
11 to you at the time to maintain your schedule, true?

12 A. No.

13 Q. All right. Was there anybody else that was
14 part of this group other than Mr. Kamholz,
15 Mr. Garing, these other gentlemen from EPA, and
16 you?

17 A. Mike Trembowicz from Tonawanda Coke was with us
18 most of the time. I don't recall if he was there
19 or not during that phase of the inspection.

20 Q. Okay. I don't know if that's come up before,
21 and if I'm being repetitive I apologize, but could
22 you tell the jury who Mike Trembowicz is, please,
23 to the extent you know who he is?

24 A. As explained to us, he was a special assistant
25 to the owner of the company and had recently

1 started employment there, as I recall.

2 Q. And was Mr. Trembowicz -- and by "the company"
3 you mean Tonawanda Coke?

4 A. Tonawanda Coke, yes.

5 Q. And was Mr. Trembowicz generally present during
6 the inspection with Mr. Kamholz?

7 A. For the most part, yes.

8 Q. All right. Now, at the time you first observed
9 this -- this PRV release, do you remember if
10 Patrick Cahill was part of the group?

11 A. He was not.

12 Q. He was not there. Okay. Now, after you have
13 this brief discussion with Mr. Garing and you
14 decide to go on with your scheduled activities,
15 tell us what happened next. Where did you go, or
16 what did you do immediately after that
17 conversation?

18 A. We were going out into the by-products plant to
19 do some monitoring that's part of Subpart L, and
20 the region also had a unit, and there were a number
21 of items we were having Mr. Kamholz walk us through
22 what he typically does in his monthly monitoring.

23 Q. All right. So at that point in time you don't
24 make any mention to Mr. Kamholz about this
25 pressure-relief valve, true?

1 A. At some point that morning Mr. Garing asked
2 Mr. Kamholz what it was. I don't recall exactly
3 when during the morning.

4 Q. I understand. But immediately after you
5 observe it, you go on with your scheduled
6 activities. We agree?

7 A. It could have been that we asked him then. I
8 just -- I don't remember the order of, if we asked
9 him right then or at a break between different
10 units.

11 Q. And, of course, if in this logbook that you
12 maintain you had decided this was important enough
13 to make an entry, we would know when this happened,
14 true?

15 A. Not necessarily.

16 Q. If you put an entry -- had put an entry in your
17 logbook, "Observed PRV released, talked to Ken,
18 then talked to Mark" or Mr. Kamholz, we would know
19 what the chronology was, right?

20 A. If I had written down the time, yes.

21 Q. Okay. But you didn't write anything down,
22 right?

23 A. Correct.

24 Q. And anybody that was to look at that logbook
25 would have no idea that you had observed this PRV

1 releasing on the morning of April 17, 2009,
2 correct?

3 A. Correct.

4 Q. All right. So you're telling us that you think
5 it was later that morning that Mr. Garing made an
6 inquiry to Mr. Kamholz?

7 A. At some point that morning.

8 Q. All right. Do you remember what -- how much
9 later it was after this conversation you had
10 with --

11 MR. MANGO: Objection, your Honor. We're
12 covering ground that was asked and answered, now
13 for a third time here. I'd let that last question
14 go. That was asked and answered. This is similar
15 format of the same questions.

16 THE COURT: Yeah. I'll permit the
17 question, but move on.

18 MR. PERSONIUS: Okay.

19 BY MR. PERSONIUS:

20 Q. Between when you spoke to Mr. Garing and when
21 you recall Mr. Garing spoke to Mr. Kamholz about
22 the PRV, do you remember how much time passed?

23 A. No.

24 Q. And do you have a recollection of what the
25 circumstances were when Mr. Garing spoke to

1 Mr. Kamholz about the PRV?

2 A. Other than that we were out in the plant, I
3 don't recall specifics.

4 Q. Could you -- could you tell us where you were
5 in the plant?

6 A. In the by-products recovery area somewhere
7 where we could see the PRV and point to it so that
8 Mr. Kamholz knew what we were referring to.

9 Q. All right. And who else was present other than
10 you and Mr. Garing and Mr. Kamholz when this
11 conversation took place?

12 A. I don't recall if anyone else was present.

13 Q. Do you remember if Mr. Cahill was there?

14 A. No. From Tonawanda Coke it was Mr. Kamholz,
15 and like I said, potentially Mike Trembowicz was
16 with the group, but Mr. Cahill was not with us at
17 that time.

18 Q. All right. And so that the topic was raised by
19 Mr. Garing with Mr. Kamholz?

20 MR. MANGO: Again, your Honor, asked and
21 answered.

22 THE COURT: Yeah. Sustained.

23 MR. PERSONIUS: I'd like to get into that
24 conversation.

25 THE COURT: Well, you can get into it,

1 but, you know, you have mentioned that about three
2 times, so --

3 MR. PERSONIUS: I can ask it this way. I
4 apologize.

5 THE COURT: No, that's okay. It's all
6 right.

7 MR. PERSONIUS: I'm not trying to drag
8 this out.

9 THE COURT: No. I'm not saying you are.
10 But it's a legitimate objection, so --

11 BY MR. PERSONIUS:

12 Q. Would you tell the jury what you remember about
13 what Mr. Garing said and what, if anything,
14 Mr. Kamholz said, and what you may have said during
15 this conversation? Tell us about the conversation.

16 A. I remember Ken asking, "Hey, what is that pipe
17 coming out of the coke oven gas line with the valve
18 on it," and Mark saying that we would have to ask
19 someone else, the by-products foreman. He didn't
20 use a name, just that title, I believe.

21 Q. Oh, Mr. Kamholz's response was -- didn't
22 mention Mr. Cahill's name?

23 A. Not to my recollection, no.

24 Q. And Mr. Cahill was not present when this
25 conversation occurred?

1 A. No.

2 Q. Was there -- do you remember anything else
3 about the -- the conversation other than what
4 you've told us?

5 A. That was about it, as far as I recall.

6 Q. All right. And were steps taken -- if you
7 know, were steps taken at that point to go talk
8 Mr. Cahill, the by-products foreman, about the
9 pressure-relief valve?

10 A. I don't know.

11 Q. You didn't take any steps to do that?

12 A. No.

13 Q. All right.

14 A. I didn't know it was Pat at the time.

15 Q. You didn't know that Pat Cahill was the
16 by-products foreman?

17 A. No. I didn't know his title.

18 Q. So on April 17th you were not aware that Pat
19 Cahill was the by-products foreman?

20 A. No. I knew he worked for Tonawanda Coke.

21 MR. PERSONIUS: I just need a minute,
22 Judge, please.

23 THE COURT: Sure.

24 MR. PERSONIUS: Thank you.

25 BY MR. PERSONIUS:

1 Q. Could we have -- this is for identification,
2 Exhibit -- Government Exhibit 3527.21. Just for
3 identification. And could we go, please, to
4 page 10.

5 Now, what you're looking at, Miss Hamre, is two
6 of the pages from this logbook you've described, is
7 that correct?

8 A. Yes.

9 Q. And in the upper left the date is
10 April 15th, 2009, is that true?

11 A. Yes.

12 Q. And that would have been two days before this
13 conversation with Mr. Kamholz that you've testified
14 about, true?

15 A. True.

16 Q. All right. And do you see that the first entry
17 on April 15th, 2009, is "Pat Cahill, dash,
18 foreman"?

19 A. Yes.

20 Q. Okay. And is it your testimony that you didn't
21 know that Mr. Cahill was the foreman in the
22 by-products area?

23 A. I didn't know that he was the specific person
24 to talk to, no.

25 Q. Okay. My question again -- I'm sorry I didn't

1 make it clear -- when you learned that Mr. Cahill
2 was a foreman at Tonawanda Coke, is it your
3 testimony that you didn't realize from the context
4 of his name being mentioned that he was the
5 by-products foreman?

6 A. I knew he worked for Tonawanda Coke. I didn't
7 know --

8 Q. And you knew he was a foreman?

9 A. Yes.

10 Q. And you didn't bother -- at the time you
11 learned his identity, you didn't bother to find out
12 what department he was the foreman of?

13 A. Not at the time, no.

14 Q. And during the course of your inspection did
15 you confer with Mr. Cahill on a number of occasions
16 with questions that you had that related to the
17 by-products department?

18 A. Yes.

19 Q. And it still didn't occur to you that he was
20 the foreman of the by-products area?

21 A. No.

22 Q. Did you ever make inquiry as to who the foreman
23 of the by-products area was?

24 A. Later on I knew that he was.

25 Q. All right. When did you find out that this

1 person you'd been talking about by-products issues
2 that you knew was a foreman was the foreman of the
3 by-products area?

4 A. On the Tuesday, the 21st.

5 Q. So you didn't find that out until Tuesday, the
6 21st, which was the closing conference?

7 A. Not at the closing conference. Earlier in the
8 day.

9 Q. Okay. But the last day you were there?

10 A. Yes.

11 Q. Okay. Now, just to finish this thought, you do
12 agree that during the course of your inspection on
13 a number of different occasions you spoke to
14 Mr. Cahill about questions regarding the operation
15 of the by-products area, true?

16 A. Yes.

17 Q. All right. And, in fact, you were -- you were
18 told at different points talk to Pat Cahill about
19 this, right?

20 A. Correct.

21 Q. All right. And when the question came up about
22 the PRV that operates in the by-products area,
23 Mr. Kamholz said talk to the -- he may not have
24 used Mr. Cahill's name at that point, but he said,
25 "Talk to the foreman of the by-products area."

1 True?

2 A. Not quite in those words, but --

3 Q. Well, okay. Tell us again what he said.

4 A. He said we'd have to talk to the by-products
5 recovery plant foreman.

6 Q. All right. And your recollection is you took
7 the time to do that on April 21st?

8 A. Yes.

9 Q. So that it's clear to the jury, this
10 conversation that you had with Mr. Kamholz on
11 April 17th where he referred you to the person you
12 found out later was Mr. Cahill, that's not in your
13 logbook either, is it?

14 A. Which?

15 Q. The conversation you had, you and Mr. Garing
16 had with Mr. Kamholz on April 17th regarding the
17 PRV, you didn't put that in your logbook?

18 A. No.

19 MR. MANGO: Objection, your Honor. We've
20 covered this ground already.

21 THE COURT: No. We're going to move on,
22 but overruled.

23 BY MR. PERSONIUS:

24 Q. Now, you final -- you do talk to Mr. Cahill, as
25 you've told us, on the morning of April 21st,

1 right?

2 A. Yes.

3 Q. How does that get set up with him? How do you
4 end up talking to Mr. Cahill?

5 A. We were out in the by-products recovery area
6 finishing up some -- a vari -- sorry about that --
7 a variety of questions that we were still following
8 up on, and we told Mr. Kamholz that we still had
9 the question about the pressure-relief valve, and
10 about that time Mr. Cahill was walking through the
11 area, and he was waved over to come talk to us.

12 Q. By whom? Who waved him over?

13 A. I believe by Mr. Kamholz.

14 Q. Mr. Kamholz. Okay. And did you then have a
15 discussion with Mr. Cahill at that point about the
16 PRV?

17 A. Yes.

18 Q. Who else was present when Mr. Kamholz waved
19 over Mr. Cahill? Do you remember?

20 A. I believe it was -- well, Mr. Garing, myself,
21 Mr. Cahill; and Mr. Kamholz was still in the --
22 still with us.

23 Q. All right. Did the conversation with
24 Mr. Cahill take place right in the by-products
25 area?

1 A. Yes.

2 Q. Right where you were standing?

3 A. Yes.

4 Q. Okay. And do you recall what -- what -- who
5 asked the questions? You or Mr. Garing or both of
6 you?

7 A. Probably a combination of the two of us. I
8 don't recall specifically.

9 Q. Did you have your logbook with you at that
10 time?

11 A. Yes.

12 Q. You carried that logbook with you at all times?

13 A. I tried to.

14 Q. All right. And you would make contemporaneous
15 entries in that as you went through the inspection?

16 A. Yes.

17 Q. And you made some entries in your logbook at
18 that time -- this is on April 21st -- of the
19 conversation that you had with Mr. Cahill?

20 A. Yes.

21 Q. Do you have a recollection of the -- what
22 questions were asked and what Mr. Cahill told you
23 about the pressure-relief valve at that time?

24 A. Yes.

25 Q. Could you share that with the jury, please?

1 A. We were standing out in the by-products area.
2 There's kind of an open area where the
3 pressure-relief valve is up above, and there was a
4 little shack that held the circular chart where the
5 pressure was recorded. We were standing in that
6 area, and we asked Pat what did he know about
7 the -- the pressure-relief valve, what was the
8 typical pressure in the line. He showed us the
9 chart inside the shed. He said that it was set at
10 between 120 and 130 centimeters of oil, but that
11 it -- it could vary because the process varied
12 some.

13 And then I asked him how long he kept these
14 pressure charts, and he said about 30 days, but
15 that those were in his -- you know, we didn't see
16 any others in the shed.

17 Q. You didn't see any others. I don't mean to
18 interrupt you.

19 A. Any other circular charts. The one was on the
20 wall that was -- had the ink pen recording, but I
21 don't recall others in the shed. He said those
22 were kept in his office that was not too far from
23 there.

24 Q. Okay. Did you then still remain at the shed?

25 A. I had taken a picture, and then we -- we --

1 he -- he escorted us over to his office.

2 Q. Okay. And what happened when you got to
3 Mr. Cahill's office?

4 A. He was searching through some of his drawers,
5 trying to find some of the historical charts, and
6 he kind of was fumbling around. He seemed nervous.
7 And, you know, we said, well, we'd like to get the
8 previous week's charts, and if he could just bring
9 us to the -- those to us at the main conference
10 room, which was kind of on the other side of the
11 facility, before we left.

12 Q. Okay. Did he do that?

13 A. He did. Or we got the charts somehow. I don't
14 remember if he's the one that brought them or not.

15 Q. And when you describe Mr. Cahill as being
16 nervous as he was looking for these charts, did you
17 form a belief as to why he was acting nervously?

18 A. No.

19 Q. You don't mean to suggest that there was
20 anything improper about the fact he was nervous, do
21 you?

22 MR. MANGO: Objection, your Honor. She
23 said she didn't know.

24 THE COURT: No. I'll allow the answer.
25 Overruled.

1 THE WITNESS: No.

2 BY MR. PERSONIUS:

3 Q. In your interaction with Mr. Cahill were you
4 satisfied that he was being truthful with you in
5 what he was telling you?

6 A. We took him to be truthful. Other people have
7 gotten nervous when we're asking them questions on
8 inspections.

9 Q. Right. Right. But -- but as far as you were
10 concerned at that time, he was being cooperative
11 with you, correct?

12 A. Yes.

13 Q. And as you look back at it now, do you agree he
14 was being cooperative with you?

15 A. Yes.

16 Q. All right. Now, was there ever a time when you
17 were in the by-products area within sight or
18 hearing of this pressure-relief valve, when
19 Mr. Cahill was with you and the pressure-relief
20 valve released?

21 A. Can you say that again?

22 Q. Sure. I don't always ask the best questions.

23 Was there a time during your inspection when
24 you were within sight or hearing of the
25 pressure-relief valve, it released, and Mr. Cahill

1 was present with you?

2 A. I don't remember if he was there or not.

3 Q. Now, what you've just described to us, at least
4 some of that is in your logbook, this conversation
5 you had with Mr. Cahill on April 21st, correct?

6 A. Yes.

7 Q. All right. Now, Mr. Linsin referred to some
8 entries that you made on April the 20th, the day
9 before, in your logbook. Correct?

10 A. Yes.

11 Q. And that includes like a diagram of the
12 pressure-relief valve and some more detail about
13 how it operates, true?

14 A. Yes.

15 Q. Okay. And you told Mr. Linsin that you don't
16 recall who provided you with that information?

17 A. No, I do not.

18 Q. And your notes don't tell us that either,
19 correct?

20 A. Correct.

21 Q. Now, let me ask you this if I can: Do you know
22 whether or not it was Mr. Kamholz that gave you
23 that information?

24 A. I don't.

25 Q. So it may have been him that gave you that

1 information on the 20th?

2 A. I don't know who it was.

3 Q. All right. And the information you got on the
4 20th, was that consistent with what Mr. Cahill told
5 you on the 21st?

6 A. I believe some of it was. Without reading
7 through it, I --

8 Q. Would it be helpful for you to take a look at
9 it before you answer that question?

10 A. Yes.

11 Q. Okay. We have the -- the exhibit on the screen
12 for identification only. I believe if we could go
13 to page 32, Lauren.

14 THE COURT: And this is 3527.21?

15 MR. PERSONIUS: Yes, Judge.

16 BY MR. PERSONIUS:

17 Q. I don't want to limit you to what I think are
18 your references to the PRV on that -- on the 21st,
19 but on this page, page 32 of this exhibit, on the
20 left-hand side I see a reference to the -- to the
21 PRV. Do you see that?

22 A. The bleeder?

23 Q. Yes.

24 A. Uh-huh.

25 MR. MANGO: Your Honor, just for

1 clarification purposes, my reading of this is
2 actually this entry was made on the 21st.

3 MR. PERSONIUS: Yes, that's right.

4 MR. MANGO: We were asking about the 20th.

5 MR. PERSONIUS: Well, we've got to compare
6 both of them, and since my book was open to -- I
7 don't mean to confuse anybody. My book was open to
8 the 21st. And if I didn't make that clear, I'll
9 make that clear. We're looking at entries for your
10 conversation with Mr. Cahill on the 21st. Okay?

11 And if you look on the left-hand side on
12 page 32 and read those entries, and let us know if
13 that refreshes your recall of the discussion you
14 had with Mr. Cahill on the 21st.

15 Are you done?

16 A. Uh-huh.

17 Q. Yes?

18 A. Yes.

19 Q. Okay. And am I picking out the right part of
20 your logbook that reflects your notations as to
21 your conversation with Mr. Cahill on the 21st?

22 A. I believe so, yes.

23 Q. Okay. Now could we go to page 28, please,
24 Lauren?

25 Now, we have page 28 on the screen, and up at

1 the top the date is 4/20/09, correct?

2 A. Correct.

3 Q. Do you see entries there that also relate to
4 the pressure-relief valve?

5 A. Yes.

6 Q. Would you review those to yourself and let us
7 know if those are your entries from the 20th
8 regarding the PRV?

9 A. Okay.

10 Q. And are we looking at the right portion of your
11 logbook for your entries, your notations regarding
12 the April 20th conversation you had with respect to
13 the PRV?

14 A. Yes.

15 Q. All right. And now that you've looked at both
16 entries, do you agree that they're consistent in
17 terms of the information they provide?

18 A. Some is the same, and some is different.

19 Q. Okay. Do you want to highlight for us what's
20 different?

21 A. The main thing I see is the relief valve set at
22 approximately 80 centimeters.

23 Q. And that's -- what date says that?

24 A. The 20th.

25 Q. Okay. And then on the 21st does it have a

1 different setting noted?

2 A. I didn't -- that was something Mr. Cahill
3 discussed with us. I didn't have an -- I didn't
4 have the specifics, I guess, so --

5 Q. So in your notes -- to be clear, your notes of
6 your conversation with Mr. Cahill do not show what
7 he said the setting was for the PRV, is that true?

8 A. No -- yes.

9 Q. Okay. I don't mean to confuse you. Are there
10 any other differences that you see in the two
11 entries that you want to note for us?

12 A. No.

13 Q. Okay. Thank you very much.

14 THE COURT: Okay. Why don't we take 15.

15 (Jury excused from the courtroom.)

16 THE COURT: Okay. You may step down. See
17 you in about 15.

18 MR. PERSONIUS: Okay. Thank you, Judge.

19 (Short recess was taken.)

20 (Jury seated.)

21 THE COURT: Welcome back. Please have a
22 seat. All right. You look revived. All right.
23 All right. We're back on in the case of United
24 States versus Tonawanda Coke and Mark Kamholz, and
25 Martha Hamre is back on the stand. She remains

1 under oath. I think we're still in
2 cross-examination by Mr. Personius.

3 MR. PERSONIUS: Just a few more questions,
4 Judge.

5 THE COURT: Okay.

6 MR. PERSONIUS: Thank you.

7 Lauren, could we please have for identification
8 Government Exhibit 3527.21?

9 THE COURT: Okay. We can do that. And
10 let's move on. Thank you. All the attorneys and
11 parties are back present. Thank you.

12 BY MR. PERSONIUS:

13 Q. Miss Hamre, what I've asked to be put back on
14 your screen is your logbook once again. Do you see
15 that?

16 A. Yes.

17 Q. Thank you. Would you please go, Lauren, to
18 page 28?

19 Miss Hamre, we now have back up the notations
20 you made from a discussion you had with someone on
21 April 20th, 2009, regarding the pressure-relief
22 valve, is that correct?

23 A. Correct.

24 Q. And one of the items you had mentioned about
25 the -- the entries on April 20 is that there was

1 mention of a -- a pressure of 80 centimeters?

2 A. Yes.

3 Q. And after you put 80 centimeters, you put a
4 question mark after that?

5 A. Correct.

6 Q. And was the question mark intended to indicate
7 that whatever your source of information was wasn't
8 sure about that?

9 A. Correct.

10 Q. All right. Now, the -- the entries that you
11 have in your logbook for April 20th of 2009 include
12 a diagram of this pressure-relief valve?

13 A. Yes.

14 Q. Correct? And something that says COG, which
15 could be the coke oven gas line?

16 A. Yes.

17 Q. And then after that you made a number of
18 entries that cover about seven lines?

19 A. Yes.

20 Q. All right. And could we go to page 32, please?

21 Now, on page 32 of Government Exhibit 3527.21
22 we have your entries in the logbook from your
23 conversation on April 21st with Mr. Cahill?

24 A. Yes.

25 Q. And am I correct that the -- the number of

1 entries -- lines of entries you have regarding the
2 discussion you had with Mr. Cahill is maybe -- it's
3 either two or four lines, if I'm reading it
4 correctly?

5 A. That -- all but the first line were discussion
6 with Mr. Cahill.

7 Q. Okay. But as far as dealing with the PRV, I
8 see two lines near the top, and then down at the
9 bottom I see two more lines that relate to the PRV.

10 A. I'd say six, that there's four at the top.

11 Q. I see. Okay. I understand. I understand
12 exactly what you're saying. Thank you.

13 You had mentioned to Mr. Linsin, when he asked
14 you some questions about a cogeneration system at
15 the plant, that you didn't recall that having been
16 referred to during your inspection, correct?

17 A. Restate the question.

18 Q. When you were being asked questions by
19 Mr. Linsin, he asked you about a cogeneration
20 system at Tonawanda Coke, correct?

21 A. Correct.

22 Q. And your testimony was that you didn't recall
23 that there was a cogeneration system in operation
24 at Tonawanda Coke, correct?

25 A. No.

1 Q. Okay. Do you recall that there was a
2 cogeneration system in operation at Tonawanda Coke
3 in April of 2009?

4 A. No. I recall talking about a cogen system. I
5 don't recall whether it was in operation or not at
6 the time.

7 Q. Okay. So you at least recall cogeneration was
8 discussed?

9 A. Yes.

10 Q. And that -- do you understand that if there was
11 a cogeneration system in operation at Tonawanda
12 Coke at that time, that that would have been a use
13 for the coke oven gas that the -- the coking
14 process generated?

15 A. Yes.

16 Q. All right. Can we go stay on Exhibit 3527.21.
17 And go to page 30, please, Lauren. And we can even
18 just do the right side, Lauren, if you can. Thank
19 you.

20 This page of Exhibit 3527.21 contains entries
21 you made on April 21, 2009, in your logbook?

22 A. Yes.

23 Q. Okay. And would you look down at the bottom of
24 the -- the page that's enlarged, which would be the
25 right side of your logbook for that date. Do you

1 see where I'm focusing?

2 A. Yes.

3 Q. And do you see there's a paragraph that starts
4 out in March 2009?

5 A. Yes.

6 Q. And that pertains to a cogen system?

7 A. Partially.

8 Q. Okay. Why don't you, if you would, read that
9 bottom paragraph to yourself, and then I think
10 we'll have to move on to the top of page 31 of this
11 exhibit.

12 A. Okay.

13 Q. Can we go to page 31, please, Lauren? And
14 we're concerned here on the left side of the page.
15 Thank you.

16 The entry that you were reading to yourself
17 continues on the top left-hand side of page 31 of
18 this exhibit, is that true?

19 A. Yes.

20 Q. Okay. Would you read that to yourself, too,
21 please?

22 A. Okay.

23 Q. Are you done reading it?

24 A. Uh-huh.

25 Q. And what -- what is reflected on these entries

1 in your logbook that I've just had you read to
2 yourself relates to a problem with a cogeneration
3 system at Tonawanda Coke in March of 2009?

4 A. Yes.

5 Q. Okay. And that would have been a month before
6 your inspection?

7 A. Yes.

8 Q. And does that help refresh your recollection
9 that Tonawanda Coke was operating with a
10 cogeneration system in place?

11 A. On that date, yes.

12 Q. On what date?

13 A. On the March 17th, or if I could go back to the
14 previous page, I think it was March 17th.

15 Q. Of 2009?

16 A. 2009.

17 Q. So that would have been a month before you were
18 there?

19 A. Correct.

20 Q. Are you suggesting by your testimony that as of
21 the time you were there that cogeneration system
22 was no longer in operation?

23 A. I don't know.

24 Q. You didn't ask?

25 A. I don't recall.

1 Q. All right. We know from your note that you
2 got -- did you get this information, by the way,
3 from Mr. Kamholz? Do you remember?

4 A. I believe so, yes.

5 Q. Okay. So we know that on April 21st of 2009
6 you received information from Mr. Kamholz that a
7 month earlier Tonawanda Coke had a cogeneration
8 system operating, true?

9 A. Yes.

10 Q. And for how long it had operated before that,
11 do you know? Before March of 2009?

12 A. I don't.

13 Q. And that's because you didn't ask?

14 A. Correct.

15 Q. Now, during your interaction with -- with
16 Mr. Kamholz in April of 2009, would you agree that
17 when you requested information from him that he
18 provided it to you?

19 A. Except for in two areas, yes.

20 Q. Okay. And in one of those areas dealing with
21 the PRV, you don't know whether he did or did not
22 supply you with the information from April 20th,
23 correct?

24 A. No.

25 Q. What's -- that's not correct?

1 A. Yes.

2 Q. All right.

3 THE COURT: Wait.

4 MR. PERSONIUS: I'll clear it up.

5 THE COURT: Clear it up.

6 MR. PERSONIUS: Double, triple negatives.

7 THE COURT: Or something.

8 BY MR. PERSONIUS:

9 Q. The entries that you have from April 20th of
10 2009 regarding the PRV, you told us you don't know
11 who provided you with that information, right?

12 A. Yeah.

13 Q. And you can't exclude Mr. Kamholz as the source
14 of that information, true?

15 A. No.

16 Q. That's not true?

17 A. That's not true. I distinctly remember
18 Mr. Kamholz did not give -- provide any information
19 regarding the PRV during the inspection.

20 Q. All right. So now your testimony is that on
21 April 20th whatever information you got about the
22 PRV did not come from Mark Kamholz?

23 A. Correct.

24 Q. And you say that even though we don't have any
25 source identified for that information from

1 April 20th?

2 A. Correct.

3 Q. So getting back to my question. Other than the
4 PRV and then there was some question about
5 production of coke?

6 A. Yes.

7 Q. Other than those two -- those two questions,
8 Mr. Kamholz was completely cooperative with you
9 during the --

10 A. He provided us information. He answered the
11 questions, yes.

12 Q. All right. And when you asked for documents,
13 he provided those to you, correct?

14 A. Yes, if he had them.

15 Q. And in the case of the PRV, at minimum we know
16 he referred you to the foreman of the by-products
17 area, correct?

18 A. Yes.

19 Q. And the foreman of the by-products area was Pat
20 Cahill, correct?

21 A. Yes, at least one of them. There may be other
22 foremen. I don't know.

23 Q. All right. And you were satisfied with the
24 information you got from Mr. Cahill about the PRV,
25 correct?

1 A. Yes.

2 Q. All right. And in the case of the other area
3 where he referred you to someone else dealing with
4 production, do you remember who he had you talk to
5 about that?

6 A. I believe his name was Mike Durkin, a financial
7 representative from Tonawanda Coke.

8 Q. All right. And the last topic that I want to
9 cover with you is that when you prepared a final
10 report, that was in October of 2009?

11 A. That was when it was finalized, yes.

12 Q. And before that report became final, did it go
13 through a review process with EPA at Region 2?

14 A. Yes.

15 Q. All right. So that that report, by the time
16 it's final, was a report that had gone -- not only
17 been prepared by you and been reviewed in your
18 office, it had also gone to -- is it New York City
19 where it would go?

20 A. Yes.

21 Q. And New York City provided its input for the
22 report?

23 A. Yes.

24 Q. And you refer in that report to this emissions
25 study that was done in July of 2003. Do you recall

1 that?

2 A. Yes.

3 Q. And you specifically reference that study and
4 indicate that that study provides that there is a
5 pressure-relief valve in the by-products area,
6 right?

7 A. I didn't indicate that in the report, no.

8 Q. You don't have a reference in your final report
9 to that emissions study indicating --

10 A. I do have a reference to the emissions study.

11 Q. And that indicates -- that reference that you
12 have indicates that the emissions study discloses
13 that there was a pressure-relief valve at Tonawanda
14 Coke, doesn't it?

15 MR. MANGO: Objection, your Honor. She
16 answered the question, no, it does not.

17 MR. PERSONIUS: Then I can go to the
18 exhibit if I need to, Judge. Do you want me to do
19 that?

20 THE COURT: I didn't rule on the
21 objection. I'm going to overrule it. So if you
22 can answer that question, please.

23 THE WITNESS: Can you say it one more
24 time, please?

25 BY MR. PERSONIUS:

1 Q. Well, why don't we do it this way. I don't
2 want to seem at all to be unfair with you.

3 Could we have -- this is for identification --
4 Government Exhibit 15 put on the screen.

5 Now, Government Exhibit 15 for identification,
6 you see the first page of that document?

7 A. Yes.

8 Q. This is the -- the final report that you
9 prepared in October of 2009?

10 A. Yes.

11 Q. Lauren, would you please go to page 8?

12 All right. On page 8 you include a -- this is
13 a continuation of your summary of findings and
14 observations, correct?

15 A. Correct.

16 Q. And this would be the -- as far as your -- it's
17 the eighth page of the document, and it's the --
18 the third page of your findings, correct?

19 A. I believe so. It's the eighth page of the
20 document. I'm not sure what page of the findings
21 without having the previous pages.

22 Q. All right. If you go to item number 6 on page
23 8 of Government Exhibit 15 for identification, do
24 you see that in the column for observation finding,
25 that you reference this emissions study?

1 A. Yes.

2 Q. And do you see that you specifically make
3 reference to the presence of a pressure-relief
4 valve?

5 A. Yes.

6 Q. And you're getting that information from this
7 emissions study, correct?

8 A. And from observations on-site. There was a
9 pressure-relief valve on the light oil tank.

10 Q. Well, the valve that you're referring -- your
11 testimony is that when you refer to the TCC
12 document Hazardous Air Pollutant Emissions
13 Inventory -- do you see that reference?

14 A. Yes.

15 Q. Okay. And then you go on right after that to
16 talk about a pressure-relief valve.

17 A. Yes. There was one listed in the -- in the --
18 what I have as Appendix G, which is the HAP.

19 Q. Right. It's the -- the emissions study, right?

20 A. Yes.

21 Q. All right. And is it your testimony that that
22 pressure-relief valve that's referred to in that
23 emissions study is not the pressure-relief valve
24 that you've been testifying about over the past two
25 days?

1 A. I don't believe it was.

2 Q. What pressure-relief valve do you think it was?

3 A. There was a pressure-relief valve on the light
4 oil storage tank that during our inspection we saw,
5 and this study was regarding fugitives, and you
6 wouldn't typically record a pipe coming off of a --
7 the coke oven gas line would be a point source.

8 Q. Did you make any inquiry to determine which
9 pressure-relief valve was being referred to in this
10 in this study?

11 A. No.

12 Q. And did you know about the reference to this
13 pressure-relief valve in this study before you went
14 to Tonawanda Coke in April?

15 A. No.

16 Q. You had the document?

17 A. I did have the document.

18 Q. But you hadn't reviewed it that carefully?

19 A. No.

20 MR. PERSONIUS: All right. May I have a
21 minute, Judge?

22 THE COURT: Yes.

23 MR. PERSONIUS: Your Honor, I have no
24 further questions at this point.

25 Thank you, Miss Hamre.

1 THE COURT: Okay, Mr. Personius. Thank
2 you.

3 Any redirect, Mr. Mango?

4 MR. MANGO: Yes, your Honor.

5 REDIRECT EXAMINATION BY MR. MANGO:

6 Q. Good morning, Miss Hamre. How are you doing
7 today?

8 A. Good.

9 Q. All right. You were just asked about this
10 hazardous air pollutant inventory that was done
11 in 2003.

12 A. Correct.

13 Q. Okay. And again, for the jury, prior to going
14 to the Tonawanda Coke Corporation for your April
15 of 2009 inspection, do you recall seeing a
16 reference to a pressure-release valve in that
17 document?

18 A. No.

19 Q. Now, during your inspection did you find a
20 pressure-release valve in the by-products area?

21 A. Yes.

22 Q. Okay. We've been talking about one that you
23 also refer to as the bleeder valve?

24 A. Yes. Also referred -- or referred by Tonawanda
25 as a bleeder valve, so --

1 Q. If I understand your testimony, there was
2 another pressure-release valve you found in the
3 light oil area?

4 A. Yes. On the light oil storage tank.

5 MR. MANGO: Okay. If I could pull up,
6 your Honor, for identification purposes Government
7 Exhibit 15.02.061 for identification purposes. And
8 absent an objection, your Honor, move this document
9 into evidence.

10 MR. LINSIN: No objection.

11 MR. PERSONIUS: No objection, Judge.

12 THE COURT: Okay. 15.02.061 received, no
13 objection. May be published.

14 (Government's Exhibit No. 15.02.061 was
15 received into evidence.)

16 BY MR. MANGO:

17 Q. Miss Hamre, can you tell the jury what we're
18 looking at on our screen here?

19 A. This was taken from the top of the light oil
20 storage tanks, and this is a pump right here, and
21 then right here is a pressure-relief valve.

22 Q. And the light oil storage tank is located in
23 the by-products area at the Tonawanda Coke
24 Corporation?

25 A. Yes.

1 Q. All right. Now, on cross you were questioned
2 about your review of the DEC file. Do you remember
3 those questions?

4 A. Yes.

5 Q. And is it customary that you review the whole
6 file at DEC, or when you go out on these
7 inspections, the appropriate state agency, or just
8 the portion of that file that relates to your
9 upcoming inspection?

10 A. We try to do as thorough a review as we can,
11 but we focus on those sections pertinent to what
12 we'll be looking at during our -- our on-site
13 inspection.

14 Q. Okay. Why did you conduct only a cursory
15 review of the DEC file and in particular this
16 hazardous air pollutant inventory emission. Why
17 only a cursory review?

18 A. We had a -- I got a number of documents while I
19 was at the DEC, and you -- other places have had
20 HAP emissions studies, and sometimes there's
21 inaccuracies in them, so, I mean, you -- you look
22 through them, but you also want to confirm while
23 you're on-site.

24 Q. Okay. So in your experience as a chemical
25 engineer, have you seen other hazardous air

1 pollutant inventories similar to the one you saw
2 for the Tonawanda Coke Corporation?

3 A. Similar items, yes.

4 Q. Okay. Have you formed an opinion as to the
5 general accuracy of these documents?

6 A. It can vary. They can be good, or they can
7 have inconsistencies. Once we're on-site we find
8 differences in what was listed. I mean, typically
9 they're done by a consultant who has sometimes very
10 minimal time at the facility also, and they give a
11 representation of what they did while they were
12 there. And we may find differences once we go
13 on-site. And that's why, you know, we like -- we
14 go through a discussion of what the operations are,
15 and then we go out into the plant, and we confirm,
16 or we try to confirm what we can while we're there.

17 Q. So you also testified on cross-examination that
18 at the time you prepared your report -- the report
19 that was finalized in October of 2009, is that
20 right?

21 A. Yes.

22 Q. Okay. At the time you prepared that, you --
23 you made reference to this hazardous air pollutant
24 inventory study, is that right?

25 A. Yes.

1 Q. So -- and in fact you made reference to a
2 notation that there was one pressure-release valve
3 in the by-products area, is that right?

4 A. Yes.

5 Q. Okay. So after your inspection you went back
6 and looked at that HAP study?

7 A. Yes.

8 Q. Okay.

9 A. And I was trying to get a component count for
10 how many components are in their system, because
11 typically a company will provide us a more detailed
12 list than what was provided to us by Tonawanda
13 Coke. They gave -- their inventory just gave basic
14 units, like the tar decanter. Typically we'd see,
15 you know, tar decanter, and then it would list
16 specific valves and usually a specific ID of some
17 sort on the list. So I was trying to give a feel
18 for how many components we thought were in the
19 system.

20 Q. Do the regulations discuss identifying the
21 number of components that are in benzene service?

22 MR. LINSIN: Objection, your Honor.

23 THE COURT: Grounds?

24 MR. LINSIN: This gets into the issue,
25 your Honor, that we discussed at the bench

1 yesterday. We're dealing with a different set of
2 regulations now.

3 MR. MANGO: Your Honor, this has now
4 become relevant in terms of the cross-examination,
5 particularly when asked in terms of specific areas
6 of concern versus areas of noncompliance. I'm
7 going to be very limited in this, but I think this
8 is appropriate, because there was a reference made
9 in -- in item number 6, which is a noncompliance
10 citation of a pressure-release valve, and I think
11 it's appropriate for the jury to know why
12 Miss Hamre was making a notation in there about a
13 pressure-release valve, what was relevant to her in
14 making that.

15 THE COURT: Okay. What's your question?

16 BY MR. MANGO:

17 Q. With respect to area number 6 you included on
18 your report, your summary of findings, your table,
19 you made note to this hazardous air pollutant
20 emission inventory, is that correct?

21 A. Yes.

22 Q. Why did you make note to this hazardous air
23 pollutant emission inventory with respect to item
24 number 6 in your table of findings?

25 THE COURT: All right. Same objection?

1 MR. LINSIN: Same objection, your Honor.

2 THE COURT: Yeah. I'm going sustain the
3 objection.

4 MR. MANGO: All right. What do the
5 regulations require for -- for components or
6 equipments that are in benzene service?

7 MR. LINSIN: Objection, your Honor.

8 THE COURT: Grounds?

9 MR. LINSIN: Same grounds.

10 THE COURT: Sustained.

11 BY MR. MANGO:

12 Q. Why did you make reference to a
13 pressure-release valve in your report?

14 A. Because there was one listed in the HAP
15 emission study, and I was trying to give an
16 approximation of how many components were in the
17 area.

18 Q. Okay. Now, so you reviewed that hazardous air
19 pollutant inventory in preparation for your
20 report -- or in -- in preparing your report. I'm
21 sorry, your Honor.

22 THE COURT: Try it again.

23 BY MR. MANGO:

24 Q. Is it fair to say you reviewed that HAP study
25 again in preparing your report?

1 A. Yes.

2 Q. In your review of that HAP study, did that HAP
3 study say where that pressure release valve that
4 was notated in the HAP study -- where it was?

5 A. Not specifically, no.

6 Q. Did it say it was this one on the light oil
7 storage tank?

8 A. No.

9 Q. Did it say it was the one you saw releasing
10 from the coke oven gas line?

11 A. No.

12 Q. Okay. If we could please pull up quadruple H,
13 please, which is in evidence now, your Honor,
14 Defendant's quadruple H.

15 Do you recall seeing this document, Miss Hamre?

16 A. Yeah, when I was cross-examined.

17 Q. Okay. Let's -- if we could just for this
18 second focus on the legend portion of this, please.

19 Okay. If you could, for the jury, please tell
20 the jury what the blue lines on this exhibit
21 reflect.

22 A. The coke oven gas line.

23 MR. MANGO: Your Honor, if I may just have
24 a moment.

25 BY MR. MANGO:

1 Q. And what does the green on this diagram
2 indicate?

3 A. It says gas line after LBA.

4 Q. Do you know what that reference to the LBA is
5 without having to go back to this?

6 A. I believe it's the light oil absorber.

7 Q. Okay. And that piece of equipment was not in
8 service during your inspection, is that right?

9 A. The gas flowed through it, but they weren't
10 using it to remove the light oils.

11 Q. Does this -- if we can take that off, please.
12 If we could focus on this area here, please. Thank
13 you.

14 If you could tell the jury, does this document
15 reflect -- depict all of the components in the
16 by-products area?

17 A. No.

18 Q. Okay. Are there any liquid lines that you
19 observed that are not depicted on this diagram?

20 A. This diagram -- no, it doesn't show the liquid
21 lines at all.

22 Q. Okay. The BH decanter that you testified about
23 on direct, do you see that listed on this diagram?

24 A. Yeah, it's -- but it's labeled as the tar
25 decanter on this.

1 Q. The moat that you observed --

2 THE COURT: Why don't you point out where
3 are you referring to? Tap the screen, please.

4 THE WITNESS: Oops.

5 THE COURT: That's okay.

6 THE WITNESS: Right there is the tar
7 decanter. Sorry. I drew around.

8 THE COURT: That's all right.

9 BY MR. MANGO:

10 Q. Okay. And that's what you referred to as the
11 BH decanter?

12 A. Yeah.

13 Q. Just so the jury's clear, is there something
14 else called the tar decanter that you saw, or are
15 those one and the same?

16 A. Those are one and the same.

17 Q. How about the moat that you observed and there
18 was pictures on, do you see that depicted on this
19 diagram?

20 A. No.

21 Q. Okay. With your finger can you draw the
22 approximate location of where that moat was?

23 Okay. How about the drip legs we talked about
24 on direct examination?

25 MR. LINSIN: Your Honor, if it could save

1 some time, we are prepared to stipulate this
2 diagram does not represent all the components that
3 Mr. Mango is referencing. It was not its
4 intention.

5 MR. MANGO: Okay. I can move on then.
6 Thank you.

7 THE COURT: All right. So stipulated. So
8 what you're saying is that certain components are
9 not included in this diagram?

10 MR. LINSIN: That is correct, your Honor.
11 The legend at the bottom right-hand corner of this
12 diagram indicates that it is the operating
13 components --

14 THE COURT: Okay.

15 MR. LINSIN: -- for the by-products area.

16 THE COURT: So stipulated, Mr. Mango?

17 MR. MANGO: Your Honor, we've agreed to
18 the admission of the document into evidence. I
19 think I'm going to leave it at that.

20 THE COURT: Okay. But this does say
21 operating components versus -- I assume the
22 opposite of that is nonoperating components. So
23 you don't disagree with that?

24 MR. MANGO: No, your Honor. That is what
25 it says, and we agree.

1 BY MR. MANGO:

2 Q. Okay. We can take that down. Thank you.

3 Let's -- let's talk about -- Miss Hamre, you
4 were asked about your interactions with Defendant
5 Kamholz. Do you remember those questions?

6 A. Yes.

7 Q. Okay. And I heard you say, "He answered the
8 questions that we asked," is that right?

9 A. Yes.

10 Q. Can you explain what you meant by that for the
11 jury?

12 A. He -- he answered the question asked. He
13 didn't offer any information. That's what I meant
14 by -- by that.

15 Q. Okay. So if you were walking along, did he
16 voluntarily provide you with information about
17 different components you were seeing?

18 A. No.

19 Q. Did you attempt to ask Mr. Kamholz any
20 questions during your inspection?

21 A. Yes.

22 Q. Okay. What responses did you receive or what
23 types of responses did you receive to those
24 questions?

25 A. He was short with his answers.

1 Q. Okay. As a result of being short with his
2 answers to you, did you decide on how to go about
3 asking Defendant Kamholz other questions during
4 your inspection?

5 MR. PERSONIUS: Object to the leading,
6 Judge.

7 THE COURT: I'm sorry. What was the
8 objection?

9 MR. PERSONIUS: Leading, your Honor.

10 THE COURT: No, I don't think so.
11 Overruled. You may answer that question.

12 THE WITNESS: Yes.

13 BY MR. MANGO:

14 Q. Okay. Can you tell the jury what that practice
15 that you came up with was?

16 A. He seemed to be short with me and more willing
17 to converse with Mr. Garing, so for the most part
18 Mr. Garing asked Mr. Kamholz the questions and I --
19 I took the primary notes. I did ask some
20 questions, just not as many.

21 Q. Okay. You recall your inspection in April
22 of 2009?

23 A. Yes.

24 Q. Okay. And on the -- during the first week of
25 the inspection I believe you testified that the

1 Region 2 EPA inspectors were there?

2 A. Correct.

3 Q. Okay. So, is it fair to say that during the
4 first week -- were they there the second week?

5 A. No.

6 Q. Okay. They weren't there during your closing
7 conference?

8 A. No.

9 Q. Okay. So during the first week there were more
10 inspectors present than in the second week, is that
11 right?

12 A. Correct.

13 Q. Can you describe for the jury how all of you as
14 inspectors would line up and walk when you're
15 walking down Broadway, for example?

16 MR. LINSIN: Objection, your Honor.

17 THE COURT: Yeah. Grounds?

18 MR. LINSIN: Well, time frame,
19 consistency. I don't know that we had a marching
20 order here.

21 THE COURT: Yeah. What's your specific
22 question? We had testimony about this before,
23 multiple times, so get the question out that you
24 want to ask.

25 BY MR. MANGO:

1 Q. All right. When you were all walking in the
2 by-products area, did all of you stay together,
3 clumped up as one group, or did you spread out?

4 A. We all were in one group, but, I mean, there
5 were enough of us we were not huddled right
6 together. There was some distance between
7 different people walking, yes.

8 Q. Okay. During that first week, in particular
9 let's focus on April 17th, 2009. That was Friday?

10 A. Correct.

11 Q. You've testified that's when you first became
12 aware of the bleeder, pressure-release valve?

13 A. Correct.

14 Q. All right. Do you know if any of the other
15 inspectors had a conversation with Pat Cahill on
16 that day?

17 A. I don't.

18 Q. Do you know if any of the other inspectors were
19 present with Pat Cahill when a release may have
20 happened from that bleeder?

21 A. I don't.

22 Q. When you first observed the bleeder release on
23 April 17th, 2009, did you know what that was at
24 that point?

25 A. No.

1 Q. At that time did you identify this as an area
2 of concern?

3 A. No.

4 Q. When did you -- if you can tell the jury, when
5 did you form an opinion that this was an area of
6 concern that needed to be brought up at the closing
7 conference and included in your report?

8 A. I would say Monday or Tuesday of the second
9 week. Tuesday was when I'd gotten the most
10 information, so we usually gather our thoughts
11 prior to the closeout, and -- and that would be
12 when we would come up with the items that we're
13 going to discuss at the closeout.

14 Q. Okay. On cross-examination you were shown
15 Government Exhibit 20.06, which was the bleeder
16 chart for April 17th. Do you remember that?

17 A. Yes.

18 Q. I'd like to show you what's in evidence as
19 20.08. If we can pull that up. That is in
20 evidence.

21 Do you see this document here?

22 A. Yes.

23 Q. If you could -- looking at this document, can
24 you tell the jury what the ranges of the pressure
25 being recorded on this chart were for that day?

1 A. Looks like 70 centimeters of oil to about 150
2 centimeters of oil.

3 Q. Okay. And would that be consistent with what
4 you were told on April 21st of 2009?

5 A. Some would be in the range of, yes, the 100 to
6 150.

7 Q. Okay. At the time you held your closing
8 conference, did you feel you knew everything you
9 needed to know about this bleeder valve to make an
10 accurate assessment as to its impact on your
11 inspection?

12 A. No.

13 Q. Okay. And so during that closing conference
14 you went over a number of concerns with Defendant
15 Kamholz?

16 A. Yes.

17 Q. Do you recall those concerns that you went over
18 with Defendant Kamholz?

19 A. Generally.

20 Q. Okay. Can you tell the jury generally what
21 those concerns were?

22 MR. LINSIN: Objection, your Honor.

23 MR. MANGO: Your Honor, I think this puts
24 it into perspective. She's been asked a number of
25 times from both counsel and different mechanisms

1 why this apparently was not emphasized enough
2 during closing conference. And I think it is
3 relevant, for the limited conversation we're going
4 to get into, to discuss the other concerns that she
5 had. Not citing what her opinions were, but just
6 concerns.

7 THE COURT: All right. I'll permit the
8 question.

9 BY MR. MANGO:

10 Q. Okay. Why don't you tell the jury.

11 A. We went through the two main areas that was the
12 focus of the inspection, Subpart L and then Subpart
13 FF, regarding monitoring, recordkeeping, the --
14 some reports that -- one of the regs, depending on
15 what level of benzene you have in your waste,
16 requires you to do additional things, and we went
17 through where we thought they fit into the -- fit
18 into the regulation, and then we also brought up
19 other issues, just the general housekeeping of the
20 moat area, and the PRV.

21 And it's our practice to bring up other issues
22 we see. Even though it was an air inspection, if
23 we saw oil dripping into a drain that --

24 MR. LINSIN: Objection to the
25 hypothetical.

1 THE COURT: Yeah. Sustained. All right.
2 End your answer there. Next question, please.

3 BY MR. MANGO:

4 Q. Did you have any concern with what's known as
5 leak detection and repair?

6 A. Yes.

7 Q. Okay. In very brief general terms --

8 MR. LINSIN: Your Honor, I renew my
9 objection.

10 MR. MANGO: Your Honor, again, this is
11 a -- the government believes in very general brief
12 terms this is relevant to putting the rest of the
13 closing conference into perspective.

14 THE COURT: No, I don't think so.
15 Overruled -- sustain the objection. Move on,
16 please.

17 BY MR. MANGO:

18 Q. If we could pull up, Lauren, Government
19 Exhibit 3527.21 for identification purposes. And
20 move to page 28.

21 Miss Hamre, do you see this entry here for
22 April 20th of 2009 from your notebook?

23 A. Yes.

24 Q. Okay. How certain are you that this
25 information that you recorded here did not come

1 from Defendant Kamholz?

2 A. I'm positive it didn't.

3 Q. Let's go to your opening conference. I'd like
4 to talk about that briefly. Do you remember, is
5 there -- was there a discussion regarding whether
6 the coke oven gas flow at Tonawanda Coke was
7 deficient?

8 A. Yes.

9 Q. Tell the jury what you recall about that
10 conversation.

11 A. I recall that Mr. Kamholz said that they -- the
12 plant was operating in a coke oven gas deficiency
13 and that they supplemented their fuel with natural
14 gas.

15 Q. Okay. Does that have any bearing on the
16 notation in your notes about "pressure-relief
17 valves, no"?

18 A. Yes.

19 Q. Okay. Tell the jury how it relates.

20 A. Mr. Kamholz was asked a question, "Do you have
21 any pressure-relief valves," and he said "No."

22 Q. Okay. If we could actually keep that exhibit
23 up, please, and go to page 4 of that document. If
24 we could zoom in on this, just for identification
25 purposes here, that side of the -- the document.

1 Is this the page during the opening conference
2 where you made a note "pressure relieve valves,
3 no"?

4 A. Yes.

5 Q. Okay. What -- what comment do you have in your
6 notebook directly after that notation?

7 A. "By-products plant flow diagram."

8 Q. And we've talked about that by-products plant
9 flow diagram, right?

10 A. Correct.

11 Q. Did that have the bleeder pressure-release
12 valve listed on it?

13 A. No.

14 Q. Okay. Now if we go -- let's go up. You have
15 "pressure-relief valves no." What's the entry
16 immediately before that notation?

17 A. "Always in a coke oven gas deficient."

18 Q. Okay.

19 MR. MANGO: Your Honor, if I may have a
20 moment.

21 THE COURT: Yes.

22 MR. MANGO: Thank you, your Honor.

23 BY MR. MANGO:

24 Q. Now, in relation to those entries in your
25 notebook, does that indicate that there's no need

1 for a pressure-release valve because they're always
2 in a coke oven gas deficiency?

3 A. Yes.

4 Q. And that's what you were told?

5 A. Yes.

6 Q. And that's what you wrote?

7 A. Yes.

8 Q. Now, at some point during your inspection did
9 it ever come to your attention that there was a
10 by-products logbook?

11 A. No.

12 Q. Did Defendant Kamholz ever offer to show you
13 the by-products logbook that was maintained in the
14 by-products department?

15 A. No.

16 Q. Is that something that you would have been
17 interested in looking at?

18 A. Yes.

19 MR. MANGO: Your Honor, if I can just have
20 one moment, please.

21 THE COURT: Sure.

22 MR. MANGO: Your Honor, nothing further.
23 Thank you.

24 THE COURT: Okay. Thank you. Any
25 recross, Mr. Linsin?

1 MR. LINSIN: Very briefly, your Honor.

2 RECROSS EXAMINATION BY MR. LINSIN:

3 Q. You were at this Tonawanda Coke facility for
4 six days, correct?

5 A. Correct.

6 Q. You had the opportunity to ask for any
7 documentation you wished, correct?

8 A. Correct.

9 Q. And your testimony in response to
10 Mr. Personius's questions were -- was that when you
11 asked for documents you were given them, correct?

12 A. Yes, if he had them.

13 Q. And you're there to study the by-products
14 department, correct?

15 A. Correct.

16 Q. And yet you never -- your testimony is that you
17 never bothered to ask if there was a by-products
18 logbook, correct?

19 A. Correct.

20 Q. You were again shown your notes from the
21 opening meeting by Mr. Mango and asked about this
22 notation regarding the PRV in the discussion in the
23 opening meeting with Mr. Kamholz. You testified
24 yesterday that all of the notes that immediately
25 preceded the reference to the PRV related to the

1 battery, didn't you?

2 A. No.

3 MR. MANGO: Objection, your Honor. That
4 was not her testimony, and I do want to just
5 clarify the reference, "you were again shown these
6 notes." During Mr. Linsin's cross-examination she
7 was not shown these notes.

8 THE COURT: Well, she answered the
9 question as no. So you may go from there.

10 BY MR. LINSIN:

11 Q. We talked yesterday about your notes in the
12 opening meeting, correct?

13 A. Yes.

14 Q. And we talked about several notes that related
15 to a discussion of the battery at this facility,
16 correct?

17 A. No.

18 Q. By the way, you are an engineer?

19 A. Yes.

20 Q. And is it your testimony, as I believe I heard
21 you say on redirect, that a pressure range of
22 70 centimeters to 150 centimeters is consistent
23 with a range of 100 centimeters to 150 centimeters?
24 Is that your testimony?

25 A. I believe I said some of it was.

1 Q. The truth is that's a significant difference,
2 isn't it?

3 MR. MANGO: Objection, your Honor. Form
4 of the question.

5 THE COURT: No. Overruled. You may
6 answer that question.

7 THE WITNESS: Repeat it, please.

8 BY MR. LINSIN:

9 Q. There's a significant difference between a
10 range of 150 centimeters to 100 centimeters and a
11 range of 150 centimeters to 70 centimeters, isn't
12 there?

13 A. There is a difference. I don't know I'd say
14 significant. It's relative to the entire range.

15 Q. It's adding 30 centimeters to the range, isn't
16 it?

17 A. Yes.

18 Q. And the original range of 100 to 150 is only a
19 range of 50, correct?

20 A. Yes.

21 Q. And your testimony is you don't know if that's
22 a significant difference?

23 A. It could be.

24 MR. LINSIN: May I just get my notebook,
25 your Honor?

1 THE COURT: Sure.

2 BY MR. LINSIN:

3 Q. May I please have Government's Exhibit 3527.21
4 that's been marked for identification. And if we
5 could go to page 4. And highlight the right side
6 of this document, please.

7 Are those your notes or a part of your notes
8 from the opening meeting at the Tonawanda Coke
9 facility on April the 14th, 2009?

10 A. Yes.

11 Q. Now, with reference to the top half of the
12 page, I ask you to look at the first three lines of
13 your notes. Do those lines relate to the battery
14 at that facility?

15 A. Those lines relate to an overall discussion
16 Mr. Kamholz had during the opening meeting of
17 facility background. It was -- we were talking
18 about the entire facility at that time -- at that
19 time, and then we broke into more specifics on the
20 by-products plant flow diagram.

21 Q. Let me reask my question. The first three
22 lines of these notes on this page, do they say --
23 am I reading them accurately? -- "Flare on coke
24 oven battery. Emergency flare. Pilot light on all
25 the time. No steam assist." Am I reading that

1 accurately?

2 A. Yes.

3 MR. MANGO: Your Honor, if I may assist,
4 the government would not be opposed to the
5 introduction into in evidence of this page of the
6 notes.

7 THE COURT: No, I don't -- well,
8 Mr. Linsin?

9 MR. LINSIN: Your Honor, I don't see it as
10 necessary. I thought we were clear on this before.
11 I hope we can clear it up quickly.

12 THE COURT: Yeah. Let's get the witness
13 to answer the question, please. I think you'll
14 have to rephrase a question, though, at this point.

15 BY MR. LINSIN:

16 Q. Do those first three lines relate to a flare on
17 the battery at the facility?

18 A. Yes.

19 Q. And do the next two lines relate to how that
20 coke oven gas is routed from the battery if the
21 exhausters are not working?

22 A. Yes.

23 Q. And then you have a line about the plant always
24 being in coke oven gas deficiency, correct?

25 A. Correct.

1 Q. And the very next line after those three lines
2 regarding the battery and the reference to coke
3 oven gas deficiency is "pressure-relief valve, no,"
4 correct?

5 A. Yes.

6 Q. And it is after that, after that in your notes,
7 that you turn to the topic of the by-products flow
8 diagram, correct?

9 A. Correct.

10 Q. And that entry in your notes is underscored,
11 correct?

12 A. Yes.

13 Q. And then you proceed to talk in -- at least
14 your notes reflect that the conversation then
15 proceeded to talk about the by-products area,
16 correct?

17 A. Correct.

18 MR. LINSIN: I have nothing further, your
19 Honor.

20 THE COURT: Okay. Thank you, Mr. Linsin.
21 Yes, Mr. Personius.

22 MR. PERSONIUS: One subject, Judge.

23 THE COURT: Sure.

24 MR. PERSONIUS: Thank you.

25 RE CROSS EXAMINATION BY MR. PERSONIUS:

1 Q. Mr. Mango asked you a number of questions when
2 he started his redirect about the July 2003
3 emissions study. Do you remember that?

4 A. Yes.

5 Q. And that had come up because in your final
6 report you make a reference to that emissions
7 study, correct?

8 A. Yes.

9 Q. And you testified, at the conclusion of my
10 examination and then in response to Mr. Mango's
11 questions, that the reference to a PRV in that
12 emissions study was interpreted by you to relate to
13 a vent on the light oil system, is that fair?

14 A. Yes.

15 Q. All right.

16 A. Or another vent in the plant.

17 Q. Well, you told us it was a vent in the light
18 oil system.

19 A. Well, there was one on the light oil -- on the
20 light oil tank, yes.

21 Q. Let me ask a question. Did you testify
22 consistently, at the end of my questions and when
23 asked by Mr. Mango, that you understood that the
24 reference to a PRV in this emissions study was to a
25 vent on the light oil system?

1 MR. MANGO: Objection, your Honor. That
2 was not her testimony. I think that's --

3 THE COURT: Well, let's hear from the
4 witness, though, Mr. Mango.

5 THE WITNESS: I'm sorry. Will you ask it
6 one more time?

7 BY MR. PERSONIUS:

8 Q. Am I correct in my recollection that you
9 described the PRV reference in the July 2003
10 emissions study as referring to a vent on the light
11 oil system?

12 A. That -- "system" is a broad term. Light oil
13 tank, yes.

14 Q. Okay. On the light oil tank. That was your
15 testimony, right?

16 A. Yes.

17 Q. All right. Could we please -- this is for
18 identification. Could we please have Defendant's
19 Exhibit PPP put on the screen?

20 You now have the first page of Defendant's
21 Exhibit PPP in front of you on the screen,
22 Miss Hamre?

23 A. Yes.

24 Q. This is the first page of this July 2003
25 emissions study?

1 A. This is the first page of my report.

2 Q. All right. Forgive me. First page of your
3 report?

4 A. Yes.

5 Q. Right? I'm sorry.

6 MR. MANGO: Your Honor, just so there's no
7 confusion, it was also referenced as Government
8 Exhibit 15 for identification purposes during
9 Mr. Linsin's cross-examination.

10 MR. PERSONIUS: Just so the record is
11 clear as to why I'm doing this, Judge, the
12 government's exhibit is not complete. It doesn't
13 include this emissions study. That's why I'm using
14 the defense exhibit, because it does include the
15 emissions study.

16 THE COURT: Okay. All right. So, that
17 will be noted for the record.

18 MR. PERSONIUS: And I'm sorry for the
19 confusion, Judge.

20 BY MR. PERSONIUS:

21 Q. Please, Sheila, if you could, go to page 105 of
22 this exhibit.

23 Now, do you recognize page 105 of the
24 Defendant's Exhibit PPP as Table 4-1 of this
25 July 2003 emissions study?

1 A. I believe so, yes.

2 Q. All right. And what you have up at the top, if
3 you can maybe try to -- thank you. It's shaded,
4 but the caption up at the top says "By-Products
5 Plant Area." Do you see that?

6 A. I see that.

7 Q. Okay.

8 THE COURT: All right. Can you highlight
9 that in yellow? Thank you.

10 MR. PERSONIUS: Thank you, Judge.

11 BY MR. PERSONIUS:

12 Q. And if you go down that column, it lists
13 different parts of the by-products plant, is that
14 true?

15 A. Yes.

16 Q. Okay. And down at the bottom it says "coke
17 oven gas system," correct?

18 A. Yes.

19 Q. And that's where you see the reference to the
20 pressure-relief valves, is -- is what the second
21 column provides, correct?

22 A. Yes.

23 Q. You go over one more column, and it says
24 "number of components," and it says "1," correct?

25 A. Yes.

1 Q. Now, a vent on a -- in the light -- the light
2 oil system, is it your testimony that would be part
3 of the coke oven gas system?

4 A. I don't know.

5 Q. Well, let's go right above that. What's the
6 category right above that? Does it say "light oil
7 system"?

8 A. Yes.

9 Q. And if we go over in the categories listed
10 there, it says valves, flanges, and pumps, right?

11 A. Right.

12 Q. And it doesn't say anything about a
13 pressure-relief valve, does it?

14 A. No.

15 Q. If you go over one more category for valves, it
16 says there's 36.

17 A. Yeah.

18 Q. So it's clear from this table, is it not, that
19 the reference to a pressure-relief valve is in the
20 coke oven gas system?

21 A. Yes.

22 MR. PERSONIUS: Thank you. Nothing
23 further, Judge.

24 THE COURT: Okay. Nothing further,
25 Mr. Mango.

1 Okay. You're wondering what I'm going to say,
2 right? Okay. How would you like to do this? How
3 would you like to go to lunch before we start
4 another witness? Okay. And I'm going to keep
5 Miss Hamre here, so you don't have to worry about
6 that. No. We're going to let her go too. She's
7 finished with her testimony. And then we'll start
8 at 1:45. Okay. And we'll go for two hours, until
9 3:45. Okay?

10 Please don't discuss the case. I mean -- and I
11 know it's tedious, but, you know, just stay with
12 it. We'll work through this, and, you know, we'll
13 get some momentum here. Thank you for your
14 attention. Thank you for your work. Please know
15 you have to be fair to both sides. Have a great
16 lunch. The sun's out there. You're going to enjoy
17 the day if you go out there. You'll come back
18 here, you'll be in a great mood, and we'll finish
19 up with two hours, okay? All right. Thank you.

20 (Jury excused from the courtroom.)

21 THE COURT: You may step down. Thank you.

22 Anything that we need to discuss before we
23 break? Your next witness is who?

24 MR. PIAGGIONE: Your Honor, since we've
25 been keeping me quiet through this procedure, I've

1 decided that I would put on the next witness, and
2 that would be Mark Kibler.

3 THE COURT: You better get it straight,
4 though, if you're going to put that witness on,
5 Mr. Piaggione.

6 MR. PIAGGIONE: Yeah. Mark Kibler,
7 K-I-B-L-E-R.

8 THE COURT: Mark Kibler. Got it. All
9 right. Thank you very much. We'll see everybody
10 here at 1:45.

11 (Lunch recess was taken.)

12 (Jury seated.)

13 THE COURT: Miss Russ is exhausted. She
14 wanted to sit down right away. She wasn't going to
15 wait for all of you to remain standing. But
16 welcome back from lunch. You look well fed. You
17 look ready for the afternoon. Please have a seat.

18 Miss Majerowski, did you buy that over the
19 lunch hour, or did you come equipped with your
20 shawl today?

21 A JUROR: Oh, I came up with it.

22 THE COURT: All right. We're ready.
23 We're back on in the case that you have come to
24 know as United States versus Tonawanda Coke
25 Corporation and Mark Kamholz, both defendants. And

1 you know that we're in the government's case, and
2 it is the only one with a burden in a criminal
3 case, and it must prove each essential element
4 beyond a reasonable doubt. And you have to get
5 through everything and decide those fact issues on
6 the 19 counts that you will get once the proof is
7 in.

8 I think we are now at, I think, already witness
9 number four, and I think we probably have a new
10 prosecutor. Mr. Piaggione is going to take the
11 next witness, is that correct?

12 MR. PIAGGIONE: With your permission, your
13 Honor.

14 THE COURT: You have it, sir, and you may
15 proceed and call your next witness, please.

16 MR. PIAGGIONE: Thank you, your Honor.
17 The United States would call Mr. Mark Kibler.

18 THE COURT: Okay.

19 MR. PIAGGIONE: K-I-B-L-E-R.

20 THE COURT: Okay. Mr. Kibler, if you
21 would make your way up to the witness stand. And
22 the record should reflect that all the attorneys
23 and parties are back present.

24 Don't enter the box. Stand right about there.
25 Turn towards the jury.

1 M A R K K I B L E R, having been duly sworn as a
2 witness, testified as follows:

3 THE COURT: Okay. Be careful when you
4 enter the box. It's a little bit tricky.

5 Okay. If you're going to get water, that's a
6 used cup, so you want to put that aside somewhere.

7 THE WITNESS: Okay.

8 THE COURT: Okay. Just a couple of
9 preliminary instructions. That microphone is
10 friendly. All you have to do is speak at it in the
11 direction of the jury. You're here to testify for
12 their benefit. Keep it at a conversational tone,
13 and then we'll be okay.

14 One, if you don't understand a question, please
15 don't answer it. Just ask the attorneys or me to
16 repeat the question.

17 Try to be as succinct with your answers as you
18 can. If you can answer something yes or no, it
19 will save you a world of problems if you do that.
20 When you volunteer information, that usually
21 complicates things.

22 If there's an objection, wait until I rule on
23 the objection, and then I'll give you instructions
24 on whether to complete an answer, stop your answer,
25 wait for another question, and the like. Do you

1 understand?

2 THE WITNESS: Yes.

3 THE COURT: All right. So that we know
4 how you're going to come across on the system,
5 state your full name, spell your last name, and
6 speak towards the jury.

7 THE WITNESS: Okay. My name is Mark
8 Kibler, K-I-B-L-E-R.

9 THE COURT: Okay. It looks like we're at
10 a go. Thank you.

11 DIRECT EXAMINATION BY MR. PIAGGIONE:

12 Q. All right. Mr. Kibler, if you could, maybe
13 face the jury when you're talking. It will be
14 helpful to them.

15 Where are you employed?

16 A. With Guardian Environmental Associates.

17 Q. And in what capacity?

18 A. I'm the president of the company.

19 Q. And how long have you been employed there?

20 A. Since 2007.

21 Q. Okay. And prior to Guardian Environmental
22 Services, where were you employed?

23 A. Gateway Environmental Services.

24 Q. And in what capacity?

25 A. I was also president of that company.

1 Q. And what years were they?

2 A. From 1992 to 2007.

3 Q. Okay. And what, if any, services did your
4 first company, Gateway Environmental Services,
5 provide?

6 A. We did environmental work for Tonawanda Coke,
7 doing EPA Method 303 inspections and Method 9
8 inspections under stack. We did the same work for
9 Erie Coke in Pennsylvania, and we also did
10 environmental work for Bethlehem Steel Corporation,
11 doing 303 emissions monitoring their stack, and we
12 also operated the wastewater treatment plant and
13 did field sampling.

14 Q. Okay. If you could just slow down a little bit
15 so this young lady to your right can record it
16 without getting a cramp. I know you're a little
17 nervous, so just try and relax.

18 Now, we'll talk about what those -- those
19 services in some detail, but in your present
20 company, do they also supply the same type of
21 services?

22 A. We no longer do wastewater treatment. We do
23 the EPA Method 303 and EPA Method 9 on the stack.

24 Q. And do you still provide those services to
25 Tonawanda Coke Corporation?

1 A. Yes, we do.

2 Q. Okay. And how often are 303 inspections
3 required at a coke-producing plant?

4 A. Every day of the year.

5 Q. And do you -- can you describe what a 303
6 inspection consists of?

7 A. It's an inspection for visible emissions from
8 the coke oven battery, smoke, basically. It
9 consists of a door inspection, where we traverse
10 the outside perimeter of the battery looking for
11 smoke emissions in the door area. There is then
12 a -- two top-side inspections which consist of the
13 offtakes, where we traverse the battery in one
14 direction, and on the return traverse we look for
15 lid leaks. At the end of those we then do five
16 consecutive charging inspections, again looking for
17 smoke emissions.

18 Q. Okay. So we'll go through that a little
19 slower. When you say you're looking to traverse
20 the doors, what exactly are you doing?

21 A. We start at one end of the battery and walk at
22 a slow pace, observing the doors. We look around
23 the perimeter of the door and the defined door area
24 for leaks.

25 Q. When you say you look for leaks, what exactly

1 are you looking for?

2 A. We're looking for smoke, visible emissions.

3 Q. Okay. So you're looking for smoke coming out
4 of the doors. That would indicate a leak, is that
5 correct?

6 A. Yes.

7 Q. Okay. And besides -- now, you mentioned
8 something else. Lids?

9 A. The top side of the battery, they have holes in
10 the top of the ovens where they charge the oven.
11 They put the coal in to fill it, and they have
12 steel lids that look like manhole covers that go on
13 those holes, and they have to be sealed. And we
14 look for leaks in that area.

15 Q. Okay. And so, in other words, when you say
16 charging, you mean that they're putting coal into
17 the oven through the hole on top, is that it?

18 A. Yes.

19 Q. Okay. And the lid over it is the lid you're
20 looking to see if it's secure to prevent smoke
21 coming out?

22 A. Yes.

23 Q. Okay. And what was the third, the off --

24 A. Offtakes.

25 Q. Okay. And what is that?

1 A. That's the -- there's a set of pipes on each
2 oven that take the gases produced in coking off the
3 ovens to the by-products area. And on this area
4 we're looking for any visible smoke leaks that
5 could be at the cap or base, or there's a defined
6 list that we have to look at.

7 Q. Okay. And the five charging events. Exactly
8 what are you talking about? When they put the coal
9 into the -- into the oven?

10 A. Yes. After they push the coke out of the oven,
11 they seal the doors back up and then open the top
12 lids, and there's a machine that carries the coal
13 out onto the battery and drops it through the
14 holes. And during that process we time the
15 emissions.

16 Q. Now, how many -- do you conduct these
17 inspections personally?

18 A. Yes.

19 Q. Okay. And how many times have you conducted
20 these inspections at Tonawanda Coke Corporation?

21 A. Over a thousand times.

22 Q. Okay. And did you conduct those inspections
23 during the period of 2005 to 2009?

24 A. Yes.

25 Q. And can you describe the procedure that you

1 follow to gain access to Tonawanda Coke
2 Corporation?

3 A. We drive in through the gate and stop at the
4 guardhouse. They have a log inside the guardhouse
5 we have to sign in on. The guard then notifies the
6 battery foreman that we have arrived. We then
7 drive back to the locker room and change into our
8 fireproof equipment, hard hat, et cetera, and a
9 foreman comes up with a pickup truck and takes us
10 to the battery.

11 Q. Okay. Now, I'll ask you this: How much time
12 does it take from the time the security guard makes
13 the phone call to the time you actually reach the
14 battery?

15 A. Generally 10 to 15 minutes.

16 Q. Okay. 10 to 15 minutes. Thank you. Now, do
17 you understand the phrase "back pressure"?

18 A. Yes.

19 Q. What does that refer to?

20 A. When the coking process is going on, they seal
21 the oven up, and they restrict the flow of gas from
22 the battery so that there's a positive pressure in
23 the oven so that they don't get oxygen in there
24 that would damage the oven or burn the coal.

25 Q. So, would a higher back pressure result in more

1 visible leaks than if it was at a lower pressure --
2 back pressure?

3 A. I'd say yes.

4 Q. Okay. And how long does a 303 inspection take?

5 A. Normally, between three and five hours.

6 Q. Okay. And do you need to walk around the
7 battery to conduct all four observations for a 303
8 inspection?

9 A. Yes.

10 Q. And have you ever walked through the east
11 quench tower to get from one side of the battery to
12 another?

13 A. Yes.

14 Q. Why would you do that?

15 A. In the winter it's a shortcut. You don't have
16 to walk through the snow. The quench area is
17 clear.

18 Q. And did you do that between 2005 and 2009?

19 A. Yes.

20 Q. Did you ever notice if there were baffles in
21 the east quench tower or not?

22 A. No, I did not.

23 Q. Why not?

24 A. Well, when you walk through the quench tower,
25 there's railroad tracks and ties, and the quench

1 water washes the material between the ties away, so
2 you've got to look down so you don't step between
3 the ties and fall.

4 Q. Would you describe that area as one that you
5 try to avoid normally?

6 A. Yes.

7 Q. Why -- why is that?

8 A. Well, the -- there's water dripping, for one
9 thing, and the quenching process, in the winter
10 they don't want the water to freeze, so they have a
11 timer on it so it can randomly cycle, and I don't
12 want to get quenched.

13 Q. Did you ever pass the by-products area while
14 conducting a 303 inspection?

15 A. I'm sorry. I didn't understand the question.

16 Q. Did you ever pass the by-products area while
17 conducting the 303 inspection?

18 A. Yes.

19 Q. Okay. And in the course of your inspection
20 between January 2005 and December of 2009, how
21 close have you come to the -- I'm sorry. I'll slow
22 down.

23 In the course of your inspections between
24 January of 2005 and December of 2009, how close did
25 you come to the by-products area?

1 A. 10 to 20 feet.

2 Q. Now, after Tonawanda Coke Corporation was
3 indicted, did employees point out the bleeder valve
4 that was the subject of that indictment to you?

5 A. Yes.

6 MR. LINSIN: Objection, your Honor.
7 Relevance.

8 THE COURT: I'm sorry?

9 MR. LINSIN: Relevance.

10 THE COURT: Relevance?

11 MR. LINSIN: Postindictment.

12 THE COURT: What is the relevance here?

13 MR. PIAGGIONE: I'm going to ask him --
14 the question is, during the period of time -- now
15 that he knows where it is, did he ever notice it
16 during the period between 2005 and 2009. And that
17 is relevant, your Honor. And I can go into why the
18 government feels it's relevant.

19 THE COURT: Well, is that the relevance
20 issue, or was it who had pointed out?

21 MR. LINSIN: If the question relates to
22 the witness's observations during the period of the
23 indictment, I have no objection. It was the
24 postindictment conversations with Tonawanda
25 Corporation employees that I raised an objection

1 to.

2 THE COURT: Let's see where you're going
3 on the basis of that objection.

4 MR. PIAGGIONE: Sure, your Honor. Thank
5 you, your Honor.

6 BY MR. PIAGGIONE:

7 Q. All right. In the times that you were at
8 Tonawanda Coke between 2005 and 2009, did you ever
9 notice that valve?

10 A. No, I did not.

11 Q. Okay. And in the thousand times you've been
12 there, prior to this being brought to your
13 attention did you ever notice that valve there?

14 A. No, I did not.

15 Q. Okay. And when you observed the valve, can you
16 describe what the by-products area appeared like
17 between 2005 and 2009?

18 A. There's a myriad of pipes running through it.
19 There is water that flows from different areas.
20 There is steam coming out. It's very noisy, and I
21 don't know what the process is in that area.

22 Q. And in your thousand 303 inspections did you
23 ever suspect that the back pressure was lowered
24 before your inspection?

25 A. No.

1 Q. Or raised after your inspection?

2 A. No.

3 MR. PIAGGIONE: I have no further
4 questions of this witness, your Honor.

5 THE COURT: Okay. Mr. Piaggione is
6 finished. Any cross-examination, Mr. Linsin?

7 MR. LINSIN: Thank you, your Honor.

8 CROSS-EXAMINATION BY MR. LINSIN:

9 Q. Good afternoon, Mr. Kibler. Are you familiar,
10 Mr. Kibler, with the type of maintenance that is
11 required to be performed on a battery in order to
12 minimize the visible emissions from that battery
13 during a coking operation?

14 A. Primarily it's luting with mud material.

15 Q. I'm sorry. What was the verb?

16 A. They use a mud -- it's a slurry of clay -- to
17 seal the top side, and on the doors they have to do
18 gasket maintenance.

19 Q. All right. Let's stay on the top side. Would
20 you be referring to work that needs to be done on
21 the lids?

22 A. On the lids and the offtakes.

23 THE COURT: Well, you used a term called
24 luting? L-O-O-T-I-N-G? Is that what you said?

25 THE WITNESS: L-U-T-I-N-G.

1 THE COURT: L-U-T-I-N-G. Okay.

2 BY MR. LINSIN:

3 Q. And what do you mean when you use the word
4 luting?

5 A. That's when they take the mud slurry and pour
6 it around the lid to seal it. It dries out and
7 seals the lid.

8 Q. So, in essence, after this lid is placed back
9 down over the opening in the battery, in the oven,
10 in the top of the oven, workers have to go around
11 and pour a mud slurry around the circumference of
12 the lid in order to seal it, is that correct?

13 A. Correct.

14 Q. All right. And is that mud slurry at times --
15 does it have to be scraped off when the lid is
16 removed in order to permit a -- a good seal when
17 it's put back on?

18 A. Yes.

19 Q. And the same applies, then, to all of the
20 offtake valves that might leak, is that correct?

21 A. There is a cap on the offtake that would be
22 treated the same way.

23 Q. All right. And with regard to the maintenance
24 work on the -- now, this is the top side you were
25 just testifying about on the battery, correct?

1 A. Yes.

2 Q. The doors, you have a long row of doors on both
3 sides of the battery, correct?

4 A. Correct.

5 Q. And there are 60 ovens --

6 A. Yes.

7 Q. -- at this -- in this battery, correct?

8 So 120 doors, correct?

9 A. Correct.

10 Q. And in order to prepare those doors to be
11 resealed, there has to be work done both on the
12 frames and the gaskets for those doors in order to
13 make sure that when they are closed back up, that
14 the seal is a good one and it prevents emissions
15 from those doors, correct?

16 A. Yes.

17 Q. And at Tonawanda Coke do you know which workers
18 were assigned to perform that maintenance that
19 we've just been discussing?

20 A. No, I do not.

21 Q. All right. Did you ever encounter an
22 individual by the name of Mr. Dolan, D-O-L-A-N?

23 A. Yes.

24 Q. Did you understand him to be one of the foremen
25 on the battery?

1 A. Yes.

2 Q. One of the shift foremen on the battery,
3 correct?

4 A. They call him a general foreman, yes.

5 Q. Do you know whether or not he was one of the
6 people charged with performing that kind of
7 maintenance on the battery?

8 A. I know he supervised people doing it, but I
9 don't know if he personally did it.

10 Q. All right. In the time that you visited
11 Tonawanda Coke company, did you -- in -- in the
12 2005-to-2009 time period, did you ever encounter an
13 individual named Tom Bermingham?

14 A. Yes.

15 Q. Did you understand him to be a consultant who
16 was working for the company with respect to battery
17 operations?

18 A. Yes.

19 Q. And did you also understand that
20 Mr. Bermingham -- part of what Mr. Bermingham was
21 attempting to do during his work with Tonawanda
22 Coke was to ensure that the back pressure on these
23 ovens was elevated, was raised?

24 A. I wasn't sure what his goal was, but I knew he
25 was changing the back pressures.

1 Q. And when you say changing, you mean -- am I
2 correct that he was elevating --

3 A. Yeah.

4 Q. -- or requesting others to elevate the back
5 pressure?

6 A. Yes.

7 Q. And that that request or direction was being
8 made on behalf of the management of the company, is
9 that correct?

10 A. I would assume so.

11 Q. And as a matter of fact, in response to those
12 efforts to elevate the back pressure in the ovens,
13 you at times noticed that the results of these 303
14 inspections that you were conducting, or your
15 colleagues, were actually suffering somewhat, is
16 that correct?

17 A. Yes. Door leaks went up.

18 Q. And do you recall having discussions with other
19 personnel at Tonawanda suggesting, hey, you might
20 want to lower the back pressure a little bit.

21 We're getting some bad numbers on these 303
22 inspections?

23 A. I did talk to Mr. Bermingham and some other
24 people about that, yes.

25 Q. All right. And just so we're clear, we've said

1 303 inspections. Just what is Method 303? Can you
2 explain that to the members of the jury, please?

3 A. It's -- EPA Method 303 is visible emission
4 inspections. You're basically looking for smoke.

5 Q. And is it correct to say, Mr. Kibler, it is an
6 inspection protocol that EPA has established for
7 inspecting ovens at coke batteries?

8 A. Yes, it is.

9 Q. And what is Method 9?

10 A. That's a visual observation of emission sources
11 for the opacity of smoke.

12 Q. And is that similarly a -- an inspection
13 protocol that has been developed and promulgated by
14 EPA?

15 A. Yes, it is.

16 Q. What do you mean when you say opacity of smoke?

17 A. It's the amount of light that can pass through
18 the emission. So there's a defined way you have to
19 read it, where you have to position yourself where
20 the sun is, et cetera.

21 Q. And you've described the 303 inspections that
22 you and your colleagues performed at Tonawanda.
23 Did you also perform the Method 9 inspections for
24 that company?

25 A. Yes.

1 Q. And what were you -- what sources of emissions
2 were you measuring when you did the Method 9
3 inspections?

4 A. The waste heat stack, the coke -- the
5 coke-handling building, and the coal-handling
6 building.

7 Q. So the coke-handling building and the
8 coal-handling building are buildings on the
9 facility, correct?

10 A. Yes.

11 Q. And the waste heat stack, are you referring to
12 one of the very tall, couple hundred feet tall,
13 chimneys that is --

14 A. Yes.

15 Q. -- on the plant?

16 A. Yes.

17 Q. And would that be the chimney that is
18 immediately to the east of the battery at that
19 location?

20 A. Yes.

21 Q. All right.

22 THE COURT: Now, both the 303 and the 9
23 protocols are visible inspections?

24 THE WITNESS: Yes, they are.

25 THE COURT: Okay. And what does that

1 mean? You just look?

2 THE WITNESS: Just visual observation.
3 You have no instrumentation used.

4 THE COURT: Okay.

5 BY MR. LINSIN:

6 Q. You were asked a question about what happened
7 when you got to Tonawanda, checking in at the
8 guard's desk, calling someone at the facility,
9 having them come and get you, and then going to a
10 changing area to change into your protective
11 clothing, correct?

12 A. Correct.

13 Q. In your experience, sir, in the facilities
14 you've worked at and your colleagues have worked
15 at, is that pretty much standard operating
16 procedure for any inspector that comes to conduct
17 an inspection at an industrial facility?

18 A. Yes, it is.

19 MR. LINSIN: I have nothing further, your
20 Honor. Thank you.

21 THE COURT: Okay, Mr. Linsin. Thank you.

22 Mr. Personius?

23 CROSS-EXAMINATION BY MR. PERSONIUS:

24 Q. Good afternoon, Mr. Kibler. Just have a couple
25 of questions.

1 The reason for your presence at Tonawanda Coke
2 is to conduct these 303 and Method 9 inspections?

3 A. Yes.

4 Q. Do either of those inspections that you perform
5 involve the by-products area?

6 A. No, they do not.

7 Q. And when you pass by the by-products area, is
8 your purpose to perform any kind of inspection of
9 that area?

10 A. No, it is not.

11 Q. You mentioned that the by-products area is
12 noisy?

13 A. Yes, it is.

14 Q. And you mentioned that there's steam that comes
15 out in the by-products area?

16 A. Yes.

17 Q. The -- do you know what the sources of that
18 steam are?

19 A. Well, they have a boiler house that generates
20 steam. I don't know how it's used in the
21 by-products area, though.

22 Q. Okay. What sticks out in your mind when you
23 walk by by-products is that you will hear -- is it
24 you hear or see or both?

25 A. Both.

1 Q. Steam coming out of different pipes and that
2 type of thing?

3 A. Yes.

4 Q. All right. Is that one of the sources of
5 the -- what makes that area noisy?

6 A. Yes, it is.

7 Q. Do you know what the other sources are that
8 make it noisy in the by-products area?

9 A. There's flowing water also, but I don't know
10 the operation over there at all.

11 Q. Can you attribute the noise to anything other
12 than the steam and this water that you've referred
13 to?

14 A. No.

15 Q. And when you go by by-products, are -- if I'm
16 correct, are you going down what's known as
17 Broadway when you pass by-products?

18 A. Yes, I am.

19 MR. PERSONIUS: Okay. Thank you, Judge.

20 THE COURT: Okay. Thank you,
21 Mr. Personius.

22 MR. PIAGGIONE: Just two questions, your
23 Honor, just to clarify something.

24 REDIRECT EXAMINATION BY MR. PIAGGIONE:

25 Q. On cross you indicated that you discussed the

1 elevated back pressure with Mr. Bermingham. Who
2 else did you discuss that with?

3 A. Gerry Priamo and somebody else, but I --
4 they've changed the management over. I don't know
5 right offhand.

6 Q. And when you got these elevated numbers, what
7 do you do with the numbers at the end of the day?

8 A. Well, they're recorded. At the end of our
9 inspection we walk the collector main as the final
10 thing we do, and we check the back pressure and
11 record those numbers on our inspection sheets.

12 Q. What do you do with the inspection sheets?

13 A. At the end of the day the data is transmitted
14 to my office so we can enter it in the computer,
15 and the original sheets are given to Mr. Kamholz or
16 his designated spot to leave them.

17 Q. And did you ever suggest that they should lower
18 the back pressure while you did your inspection and
19 then raise it back afterwards?

20 A. No.

21 Q. Okay. Would that defeat the purpose of doing a
22 303 inspection if they did?

23 A. It would change the results.

24 Q. Would it give -- the purpose of a 303
25 inspection is to give an impression -- or rather a

1 snapshot, as it were, of how the ovens are
2 operating during the normal course of business,
3 isn't that true?

4 A. Yes.

5 Q. So if they were changing it, you would not be
6 getting a representation of what was going on when
7 they were actually conducting business?

8 MR. PERSONIUS: Your Honor, it's leading,
9 and I object to it.

10 THE COURT: It is leading. Sustained. I
11 mean, do you and I count to two differently? I
12 think you said two questions.

13 MR. PIAGGIONE: I'm sorry, your Honor. I
14 lost my head. May I ask one more, then, just
15 rephrase that question?

16 THE COURT: Yeah. As long as it's not a
17 leading question and relevant.

18 BY MR. PIAGGIONE:

19 Q. Okay. If the back pressure was -- was changed,
20 would that be reflective of the -- and then
21 reversed again after you left, if it was changed
22 just for the purpose of your inspection, would that
23 be an accurate reflection of how the coke oven
24 batteries were operating?

25 A. No.

1 MR. PIAGGIONE: Okay. No further
2 questions.

3 THE COURT: Okay.

4 MR. LINSIN: Nothing further, your Honor.

5 THE COURT: Okay. Thank you.

6 Mr. Personius?

7 MR. PERSONIUS: Thank you, no, Judge.

8 THE COURT: Okay. All right. Mr. Kibler,
9 you're excused. Thank you very much, sir.

10 MR. MANGO: Your Honor, I believe our next
11 witness may be on a different floor. I don't know
12 if we can take maybe a five-minute break, I'll
13 retrieve him.

14 THE COURT: We'll wait for you.

15 MR. MANGO: Okay. Thank you.

16 THE COURT: Thank you. Well, why -- don't
17 you have somebody to send out there, or do you need
18 to go?

19 MR. MANGO: Yes.

20 THE COURT: All right. Are you going to
21 make any stops on the way, Mr. Mango?

22 MR. MANGO: No stops, your Honor.

23 THE COURT: Okay. Thank you.

24 I know you're in a state of disbelief on the
25 duration of that witness, ladies and gentlemen, but

1 there may be some to come that might be just that
2 long or short. So we'll see.

3 MR. PIAGGIONE: I don't get any credit for
4 that, your Honor?

5 THE COURT: None whatsoever,
6 Mr. Piaggione.

7 MR. MANGO: Your Honor, the government
8 would call Pat Cahill.

9 THE COURT: Okay. If you would approach
10 the witness stand. It's off to your right here.
11 Don't enter it. Stand right there, face the jury,
12 and we'll have you sworn in.

13 P A T R I C K W I L L I A M J O H N C A H I L L,
14 having been duly sworn as a witness, testified as
15 follows:

16 THE COURT: Okay. Have a seat. Make
17 yourself comfortable. Just a few preliminary
18 instructions. Basically, you should know, the
19 microphones are friendly. If you speak at them at
20 a conversational tone, it should pick you up pretty
21 well. You don't have to get right on top of it.
22 Just hold back just a little bit.

23 When you respond to a question, try to respond
24 to the jury so they can observe you. Be as concise
25 with your answers as you can. That's better for

1 everybody. Because if you volunteer information,
2 that sometimes complicates matters.

3 If you can answer a question yes or no, try to
4 do that.

5 If there's an objection, wait until I rule on
6 the objection. Then I'll give you instructions on
7 what to do, answer the question, wait, or instruct
8 the attorneys on how to approach the next matter.

9 Okay?

10 THE WITNESS: Yep.

11 THE COURT: All right. Are you ready,
12 Mr. Mango?

13 MR. MANGO: We are ready.

14 THE COURT: Mr. Witness, so we know how
15 you're going to sound, state your full name, spell
16 your last name, please.

17 THE WITNESS: Patrick William John Cahill,
18 C-A-H-I-L-L.

19 THE COURT: Okay. Sounds like you're
20 going to carry well.

21 Mr. Mango, welcome back.

22 MR. MANGO: Thank you, your Honor.

23 THE COURT: Your witness.

24 MR. MANGO: Thank you, your Honor.

25 DIRECT EXAMINATION BY MR. MANGO:

1 Q. Good afternoon --

2 A. Good afternoon.

3 Q. -- Mr. Cahill. How are you?

4 A. Good.

5 Q. All right. Are you currently employed?

6 A. Yes, I am.

7 Q. Can you tell the jury how you're currently
8 employed --

9 A. I work at Tonawanda Coke.

10 Q. How long -- what position are you currently
11 employed?

12 A. Right now, I'm the plant manager.

13 Q. How long have you been plant manager at the
14 Tonawanda Coke Corporation?

15 A. Almost a year and a half now.

16 Q. Can you describe for the jury what your job
17 duties are as plant manager?

18 A. Yes. I oversee every department, coal handling,
19 coke handling, battery, and by-products.

20 Q. Okay. How many different departments was that?

21 A. Four.

22 Q. Just try to go a little slower.

23 So what are they again?

24 A. Coal handling, coke handling, battery, the
25 ovens, and by-products.

1 Q. Okay. And if you can tell the jury, just
2 briefly, how did you end up becoming plant manager?

3 A. Well, when -- they asked me and they said, Pat,
4 you're going to be plant manager.

5 Q. Okay.

6 THE COURT: Everyone should be so lucky,
7 in my humble opinion.

8 MR. MANGO: Exactly.

9 BY MR. MANGO:

10 Q. All right. Was there any type of application
11 process?

12 A. No.

13 Q. How did you receive the news that you were
14 going to become plant manager?

15 A. I think it was Bob Kolvek who mentioned it to
16 me. He said you're going to be plant manager.

17 Q. How soon after that conversation did you become
18 plant manager?

19 A. A month later.

20 Q. All right. And this was -- you gave -- you
21 gave the jury how long you've been in the position.

22 When did you start as plant manager?

23 A. July of 2011.

24 Q. Okay. Can you tell the jury if you've worked
25 in any other positions at the Tonawanda Coke

1 Corporation?

2 A. Yes. I was the supervisor of the by-products.

3 I was a by-product operator. I was -- I worked on

4 the battery, the ovens, which was the charge car,

5 backdoor machine, pusher, hot car, heater, and

6 laborer. I started off as a laborer.

7 Q. When did you start at the Tonawanda Coke

8 Corporation?

9 A. It was '86. It was -- it was 24, 25 years ago.

10 Q. All right. Now, in any of those positions that

11 you've served, even including your current

12 position, have you received any type of

13 environmental training?

14 A. No, sir.

15 Q. Any type of training regarding hazardous waste?

16 A. No, sir.

17 Q. And any type of training regarding benzene or

18 other chemicals found in coke oven gas?

19 A. No, sir.

20 Q. All right. Let's talk about when you were a

21 by-products operator.

22 Why don't you tell the jury the time period

23 that you were a by-products operator.

24 A. Okay. The time period?

25 Q. Yes, if you could.

1 Do you know how long you were a by-products
2 operator? That's the question.

3 A. Yes. I was a BP operator for eight years --
4 six years.

5 Q. All right. What you were your job duties as a
6 BP -- you call it BP operator?

7 A. Yes.

8 Q. -- as a BP operator?

9 A. We would have to make rounds every two hours.
10 We would make adjustments on plate coolers to cool
11 the gas, pump sumps. Maintain levels in your LGAs,
12 and that's it. Every two hours.

13 Q. Okay. So you would make rounds and check on
14 things?

15 A. Yes.

16 Q. Is that fair to say?

17 A. Yes.

18 Q. Okay. Are there any records kept in the
19 by-products area in the normal course of business
20 as a by-products operator?

21 A. Yes. We have a log book.

22 Q. All right. Are you familiar with those log
23 books?

24 A. Yes, I am.

25 Q. And why don't you tell the jury what goes into

1 those logs books?

2 A. Well, you -- like I mentioned earlier, as
3 you're doing your rounds, you --

4 MR. LINSIN: Your Honor, excuse me.

5 THE COURT: Excuse me?

6 MR. LINSIN: Pardon me for interrupting.
7 I apologize.

8 The question was posed in the plural, log
9 books. And if we're referencing more than one log
10 book, I just ask it be specific as to which one.
11 If we could use a title or something, that would be
12 helpful.

13 THE COURT: Different log books for
14 different functions versus one log book, but
15 multiple when they get filled in?

16 MR. LINSIN: Yes.

17 THE COURT: I guess is that what you had
18 in mind?

19 MR. LINSIN: That is exactly correct.

20 THE COURT: Can you keep that clear so we
21 all know, please?

22 MR. MANGO: Yes, your Honor.

23 THE COURT: Thank you.

24 BY MR. MANGO:

25 Q. Is there a book known as the BP operator log

1 book?

2 A. Yes.

3 Q. Okay. When that BP operator log book gets
4 filled up for a certain time period, does another
5 log book get started?

6 A. Yes.

7 Q. And what do you call that other log book?

8 A. BP log book.

9 Q. They're all called BP operator log books?

10 A. Yes.

11 Q. When I use the term "BP operator log books",
12 I'm talking about a longer period, so multiple
13 books?

14 A. Right.

15 Q. Is that fair to say?

16 A. Yeah.

17 Q. Okay. The -- for those log books, the BP
18 operator log books that get created, can you tell
19 the jury what goes in those log books?

20 A. Sure.

21 If -- if you are pumping down your sumps,
22 making adjustments on plate coolers, add packing
23 into a pump, you would put that all down in your
24 log book. Oil, grease.

25 Q. Okay. Are there any pressure valves or

1 pressure settings that you would adjust or could be
2 adjusted in your operations as a by-products
3 operator?

4 A. Yes.

5 Q. Okay. If an adjustment gets made to a pressure
6 valve or setting, would that generally get recorded
7 in your by-products operator log book?

8 A. Yes, it would.

9 Q. Are by-products operators instructed to log any
10 changes to pressure settings or valves in this log
11 book?

12 A. Yes, they are.

13 MR. MANGO: Your Honor, if I may have a
14 moment?

15 THE COURT: Sure.

16 MR. MANGO: Your Honor, at this point,
17 absent an objection, the government would move all
18 en mass Government's Exhibit 82, which is a
19 by-products log book from August 17th, 2006, to
20 January 31st, 2007;

21 Government Exhibit 83, which is a by-products
22 log book from January 31st, 2007, to July 10th
23 of 2007;

24 Government Exhibit 84, which is a by-products
25 operator log book from July of 2007 to December

1 of 2007;

2 Government Exhibit 85, which is a by-products
3 log book from December 17th, 2007, to
4 June 22, 2008;

5 Government Exhibit 86, which is a by-products
6 log book from June 22nd, 2008, to
7 December 30th, 2008;

8 Government Exhibit 87 which is a by-products
9 log book from December 31st, 2008, to May 9th
10 of 2009;

11 Government Exhibit 88, which is a by-products
12 log book from May 10th of 2009 to
13 September 26th of 2009;

14 And Government Exhibit 98, which is a
15 by-products log book from September 27th, 2009, to
16 December 17th, 2009.

17 MR. LINSIN: No objection, Judge.

18 MR. PERSONIUS: No objection, your Honor.

19 THE COURT: Okay. Exhibits 82 through 89,
20 inclusive, no objection, received, and we'll
21 proceed from there.

22 (Government's Exhibit 82 through 89 were
23 received into evidence.)

24 MR. MANGO: Thank you, your Honor. If we
25 could just publish so the jury can see what I'm

1 looking at, Government Exhibit 82 now for
2 identification purposes [sic].

3 BY MR. MANGO

4 Q. Mr. Cahill, do you see that log book on your
5 screen?

6 A. Yes, I do.

7 Q. If we can go to the next page, please. This
8 would be just inside the cover; is that right?

9 A. Yes.

10 Q. If we could go a couple pages in.

11 Now there's some entries listed here. It
12 appears for August 17th of 2006 at the top, is that
13 right?

14 A. Yes, it is.

15 Q. And that's -- is there a particular shift
16 that's listed there?

17 A. That looks like 8:00 a.m. to 8:00 p.m.

18 Q. All right. Is that the typical shift for a
19 by-products operator, 12-hour shift?

20 A. Normally, it's eight to four, four to 12, and
21 12 to eight. I know we had a time frame there
22 where they were working four on and four off and
23 they were doing 10-, 12-hour days, but normally
24 it's eight to four, four to 12, and 12 to eight.

25 Q. All right. So as I asked you before, it would

1 be standard to record any pressure settings that
2 get adjusted in these log books?

3 A. Yes.

4 Q. All right. Let me ask you -- we can take that
5 off? Thank you.

6 Let me ask you about -- are you familiar with
7 what's known as the tar box?

8 A. Yes.

9 Q. Okay. Does the by-products operator have any
10 responsibility relating to the tar box?

11 A. Yes.

12 Q. Okay. Why don't you tell the jury what
13 responsibilities the by-products operator has for
14 the tar box?

15 A. The tar box, in a 24-hour period a week, it
16 will start filling up with tar. The BP operator
17 would call an end loader operator over, have him
18 come over, take the tar out. End loader would stay
19 there five, ten minutes, and then the end loader
20 would take off with the tar, leave with the tar.

21 Q. How often would the tar box need to get
22 emptied?

23 A. High production, three times a week. Low
24 production, maybe once a week, once a -- once every
25 other week.

1 Q. Okay. Is there any record that is kept by the
2 by-products operator or in the by-products
3 department relating to when the tar box is emptied?

4 A. Yes, there's a tar book.

5 Q. Okay. So we'll call that the tar book. You're
6 familiar with the tar book?

7 A. Yes, I am.

8 Q. What goes in the tar book?

9 A. The date, the time, and the operator who called
10 to have it cleaned, his initials.

11 Q. Have you made entries in the tar book before?

12 A. Yes, I have.

13 MR. MANGO: Your Honor, if I can have a
14 moment?

15 THE COURT: Certainly.

16 MR. MANGO: Your Honor, at this point, the
17 government would move Government's Exhibit 14 into
18 evidence, absent an objection from the defendants.

19 MR. LINSIN: Could I just see the volume,
20 please? No objection, your Honor.

21 MR. PERSONIUS: No objection, your Honor.

22 THE COURT: Okay. Government's Exhibit 14
23 received into evidence. No objection.

24 (Government's Exhibit 14 was received into
25 evidence.)

1 MR. MANGO: Your Honor, I'd ask that be
2 published for the jury.

3 THE COURT: Certainly.

4 BY MR. MANGO:

5 Q. Mr. Cahill --

6 A. Yes.

7 Q. -- can you tell the jury what we're looking at
8 here? And if we can actually flip to the next
9 page, why don't you tell the jury what we have
10 here?

11 A. Yes. That's the operators jotted down when the
12 tar box was cleaned.

13 Q. Okay. So this tar book starts May 20th of
14 1994?

15 A. Yes.

16 Q. Okay. Is that -- there's somebody with the
17 initial PC there.

18 Who is that?

19 A. That's me.

20 Q. All right. If we could go to page 63, please.

21 MR. MANGO: I'd like to go to page 63 of
22 this document, your Honor. I think that's page 3.

23 THE COURT: Okay. I think there's a
24 little discrepancy in --

25 MR. MANGO: Your Honor, I can proceed.

1 Excellent. Thank you.

2 BY MR. MANGO:

3 Q. So the last entry for this book, Mr. Cahill,
4 shows what on the screen?

5 A. 4/7/10.

6 THE COURT: Okay. This is 61, I think,
7 right?

8 MR. MANGO: Yes, your Honor. There's
9 different Bates number on here. I was trying to
10 match them up. They didn't match up perfectly.

11 THE COURT: Just go with our Bates number
12 that we can see.

13 MR. MANGO: We'll do that.

14 BY MR. MANGO:

15 Q. And if we could go to the next image, please,
16 62.

17 All right. Do see there's some type of
18 placeholder in there?

19 A. Yeah.

20 MR. MANGO: Your Honor, may I approach the
21 witness and show him the original copy for this?

22 THE COURT: Okay. Yeah, you can do that.
23 But I think -- okay. Go ahead, please.

24 MR. MANGO: Or we could use the Elmo.

25 THE COURT: No, that's okay.

1 BY MR. MANGO:

2 Q. Mr. Cahill, do you see that placeholder in the
3 book?

4 A. Yes, I do.

5 Q. Okay. What color is it?

6 A. Red.

7 Q. Can you describe what it says for the jury,
8 please?

9 A. Coal tar. Caution. May cause skin irritation,
10 and so on.

11 MR. MANGO: Okay. Your Honor, if I may
12 just publish this by holding this up to the jury?

13 THE COURT: You may.

14 MR. MANGO: Okay. Mr. Cahill, can you
15 tell the jury what this red tag was used for?

16 THE WITNESS: Yes, it was --

17 THE COURT: Just one second, Mr. Cahill.
18 Why don't you publish it to the attorneys too, so
19 they know what you're doing.

20 MR. PERSONIUS: Judge, it's looking like
21 that's paper clipped inside the exhibit. I wonder
22 if for recordkeeping we should consider marking
23 that as a sub exhibit rather than just having it
24 paper clipped on a page.

25 MR. MANGO: We could, your Honor. The

1 government would move this as Exhibit 14.1.

2 THE COURT: Okay. No problem with that,
3 Mr. Linsin?

4 MR. LINSIN: No objection, your Honor.

5 THE COURT: Okay.

6 THE CLERK: It's in evidence, then?

7 THE COURT: It will be received into
8 evidence. No objection?

9 MR. LINSIN: No objection, your Honor.

10 MR. PERSONIUS: No objection, Judge.

11 (Government's Exhibit 14.1 was received
12 into evidence.)

13 MR. MANGO: Your Honor, may I approach the
14 witness again?

15 THE COURT: Yes.

16 BY MR. MANGO:

17 Q. Mr. Cahill, can you tell the jury what this red
18 tag was used in Government Exhibit 14.1 for the tar
19 book?

20 A. Yes. Just to keep the page. So when you
21 flipped it open, all you have to do is write it
22 down. That's what it was for.

23 Q. Okay. So it was your page holder?

24 A. Yeah.

25 Q. Okay. Okay. Based on -- we can take that

1 down. Thank you, Lauren.

2 Based on your position that you've held --
3 well, let's actually talk for a minute. After
4 being an operator, you became by-products foreman?

5 A. Yes.

6 Q. Tell the jury how long you served as
7 by-products foreman.

8 A. Again, times, I want to say six years, seven
9 years.

10 Q. All right. What duties would you have as a --
11 what duties did you have as a by-products foreman
12 that were different than a by-products operator?

13 A. I would oversee all the operators. I would
14 make -- oversee the maintenance crew that was in
15 the by-products. Made sure if a pump went down, we
16 would repair it that following day. That's about
17 it.

18 Q. Okay. Now, based on the position you've held
19 as a by-products operator and foreman, are you
20 familiar with the operation of the by-products
21 department?

22 A. Yes, I am.

23 Q. All right. Can you describe, in general terms
24 for the jury, the flow of the coke oven gas through
25 the by-products department as it comes off the

1 battery?

2 A. Sure. We have a big exhauster. And just
3 imagine the exhauster being cut in half. One half
4 is on suction, the other half is on pressure. So
5 what we do is draw the gas from the battery on the
6 suction side. Once it ends up going through the
7 exhauster, it's on the pressure side. Then it goes
8 through our units, we clean it up, send it back to
9 the battery, and send it back to the boiler house.

10 Q. Okay. In general terms, can you tell the jury
11 what components the gas flows through in the
12 by-products department?

13 A. Sure. As it -- we are drawing it from the
14 battery, it would go through our primary and
15 secondary CGA which cools the gas. Then it goes
16 through the exhauster. Then it would come out of
17 the exhauster, go to our precipitator. Then it
18 would go to our LGAs. Then it would go to our LBA.
19 Used to go to our LBA. And then it would go to the
20 battery and to the boiler house.

21 Q. Prior to the coke oven gas coming to the
22 by-products department, in the event of an
23 emergency, what would happen to the coke oven gas?

24 A. It would go off the collector mains flare.

25 Q. Is that also called the battery flare stack?

1 A. Yes, it is.

2 Q. How is the battery -- first off, what is the
3 purpose of the battery flare stack?

4 A. Well, again, if we lost an exhauster, the
5 pressure would back up on the battery, so they
6 would open that up.

7 Q. How is the battery flare stack lit currently?

8 A. Pilot light.

9 Q. All right. How many times -- in your
10 26-or-so-odd-year career at the Tonawanda Coke
11 Corporation, how many times have you seen that
12 battery flare stack light off?

13 A. Twenty or 30.

14 Q. Okay. And can you describe for the jury how
15 the pilot light works?

16 A. Sure. The minute you start opening up the
17 valve, the rush of gas will come through and the
18 pilot would just light the gas as it's leaving the
19 pipe.

20 Q. Has there always been a pilot light on the
21 battery flare stack?

22 A. No.

23 Q. How was the flare stack lit during the time
24 that it did not have a pilot light?

25 A. A broom. We would light a broom on fire and

1 throw it up there.

2 Q. Were you trained that way?

3 A. Yes.

4 Q. And to your knowledge, during the time that
5 there was no pilot light, was this the standard
6 operating procedure for lighting the battery flare
7 stack?

8 A. Yes.

9 MR. MANGO: All right. I'd like to pull
10 up Government Exhibit 15.02.097 that is in
11 evidence, your Honor, and ask that we can show this
12 to the jury and Mr. Cahill.

13 BY MR. MANGO:

14 Q. Mr. Cahill, do you see this on the screen?

15 A. Yes, I do.

16 Q. Okay. What are we -- what is this that's on
17 the screen?

18 A. That's our bleeder, pop off, whatever. I mean,
19 we call it bleeder.

20 Q. All right. Have you heard the term "pressure
21 relief valve"?

22 A. Yes.

23 Q. Is that a term that any Tonawanda Coke
24 employee's used for it?

25 A. No. Everybody that I know of used it as a

1 bleeder -- called it a bleeder.

2 Q. And where is the bleeder located? This
3 picture, where was this picture taken?

4 A. On top of the gas line going to the boiler
5 house.

6 Q. Which direction goes to the boiler house? You
7 can touch the screen and draw.

8 Okay. So if you could draw with your finger
9 and make an arrow, which direction is it going?

10 A. That way.

11 Q. All right. So that is -- should have given you
12 some practice on this. Sorry. I know you weren't
13 ready for this.

14 That's going towards the boiler house?

15 A. Yes.

16 Q. All right. As part of your responsibilities as
17 by-products foreman, did you have any
18 responsibilities relating to the operation of this
19 bleeder valve?

20 A. Yes.

21 Q. What were your responsibilities?

22 A. To maintain the pressure in the plant.

23 Q. All right. What were your responsibilities
24 with respect to this bleeder valve?

25 A. Setting it.

1 Q. Setting it?

2 A. Yes.

3 Q. Okay. So there's a way to set it?

4 A. Yes.

5 Q. All right. We'll get there in a second.

6 Is the bleeder, this, what we're looking at,
7 still operational today?

8 A. No.

9 Q. Okay. Tell the jury, please, when the bleeder
10 was taken out of service.

11 A. I want to say March of 2010.

12 Q. Okay. March of 2010.

13 Were you involved in having the bleeder taken
14 out of service?

15 A. Yes.

16 Q. Okay. What was your role in that?

17 A. Being the supervisor, I had to make sure
18 everything was going okay as it was being taken out
19 of service.

20 Q. Did somebody give you instructions or notice
21 that this was going to be taken out of service?

22 A. Yes.

23 Q. Who was that?

24 A. Bob Kolvek.

25 Q. What was his position at the time?

1 A. I think vice-president of operations.

2 Q. Were you given a reason why the bleeder was to
3 be blanked off?

4 A. No.

5 Q. Okay. Is that the term you use for it,
6 "blanked off"?

7 A. Yes.

8 Q. Tell the jury what blanking it off means, if
9 you could.

10 A. You're putting a plate, a steel plate, in
11 between a valve and the gas line so no gas can come
12 out through that solid plate.

13 Q. Okay. So if you -- now, with a little practice
14 on the screen, if you could point -- if you touch
15 the screen, you'll add a point where the blanking
16 happened, where the plate was put.

17 Right there?

18 A. Yes, right there.

19 Q. Okay. Is the structure itself still there?

20 A. Yes.

21 Q. The stack?

22 A. Yes.

23 Q. Okay. During the time the bleeder was in
24 service, what was the purpose of the bleeder?

25 A. To relieve pressure on the gas line.

1 Q. Okay. And how did it do that?

2 A. There's a chart recorder in a green shack and
3 there is two pen arms. One is a set point and the
4 other one is an ink pen. Once you have that set
5 point set at, let's say, a hundred, the ink pen
6 would rise. If it goes up beyond that set point,
7 it would open up the valve.

8 Q. Okay. Would that happen automatically --

9 A. Yes.

10 Q. -- or would somebody have to manually have to
11 do that?

12 A. No, automatically.

13 Q. The ink pen -- there's these two things --

14 A. Yes.

15 Q. -- that relate to this chart. Let's go through
16 it for a second.

17 There is an ink pen?

18 A. Right.

19 Q. What is the ink pen monitoring, if anything?

20 A. The plant's pressure.

21 Q. Okay. So somehow this -- there's some device
22 that records on this circular chart what the plant
23 pressure is?

24 A. Yes.

25 Q. At what point is the plant pressure recorded?

1 A. What point?

2 Q. Yeah. What point in the line, if you can
3 point?

4 A. It's not on this line here. It would be down
5 further down by the green shack building.

6 Q. The question is -- if I just put a point there,
7 for example --

8 A. Right.

9 Q. -- is the ink pen recording the pressure in the
10 line right there?

11 A. No.

12 Q. Okay. Where is the -- where's the pressure
13 that the ink pen is recording?

14 A. Closer to the green shack. Then it sends a
15 signal up to this control valve to open.

16 Q. Okay. So that is on what line?

17 A. The main gas line just before it goes to the
18 ovens, the battery.

19 Q. Okay. Is that above ground or underground?

20 A. Above.

21 Q. All right. So it's recording the pressure in
22 the line at that point?

23 A. Yes.

24 Q. And you mentioned there's this second arm
25 that's the set point?

1 A. Yes.

2 Q. And how do you set that set point?

3 A. With a dial. You just raise or lower it --

4 Q. All right.

5 A. -- in the chart recorder.

6 Q. In the chart recorder?

7 A. Yeah.

8 Q. Where is the set point? How do you know where
9 you're setting the set point?

10 A. Because that arm, as you're turning that dial,
11 would either go up or down on the chart recorder.
12 You will see that you have zero to, let's say, 200.

13 Q. So, again, tell the jury how this bleeder would
14 then open up.

15 A. Again, you have your set point. If the pen
16 comes up above that set point, the bleeder then
17 will start opening up and get a signal from that
18 chart recorder, an impulse, and send it right back
19 to the valve and open it up.

20 Q. Mr. Cahill, if you could, tell the jury, when
21 the valve would open, what would come out of the
22 stack?

23 A. Coke oven gas.

24 Q. Was there ever a period of time that this
25 bleeder was in a different location?

1 A. Yes.

2 Q. Okay. Can you describe for the jury in what
3 other location this bleeder was at?

4 A. It would have been back more towards the black
5 tank here. Right there. Right where I just put
6 that mark.

7 MR. MANGO: Okay. Your Honor, I'd like to
8 pull up Government Exhibit 50 for identification
9 purposes at this point, and absent an objection, I
10 would move this into evidence.

11 MR. LINSIN: Your Honor, without a
12 foundation regarding this photograph, we do object.
13 There are details about how this photograph was
14 taken that we are not aware of, and I think would
15 be important for the jury's understanding the photo
16 before it is introduced.

17 THE COURT: Okay. I'll mark it for
18 identification only.

19 BY MR. MANGO:

20 Q. Mr. Cahill, do you see the photograph up on
21 your screen?

22 A. Yes.

23 Q. Okay. So do you see the bleeder --

24 A. Yes.

25 Q. -- on this -- on this photograph?

1 A. Yes.

2 Q. Okay. Do you see any other type of structure
3 that would indicate to you where the bleeder was
4 previously located?

5 A. Yes.

6 Q. Okay. Could you please circle -- you can use
7 your finger and circle where the bleeder would have
8 been located? Let me zoom in, if I can. It may
9 make it easier.

10 A. Okay.

11 Q. It would have been there?

12 A. Yes.

13 Q. Is that the structural support for the old
14 bleeder?

15 A. Yes.

16 Q. All right. If we can actually back out for a
17 moment.

18 Where was this -- if you -- if you -- knowing
19 the angle this was taken, where was this
20 photograph -- do you believe this photograph would
21 have been taken from?

22 MR. LINSIN: Your Honor, I just ask the
23 question be rephrased to see if this witness
24 actually knows.
25

1 BY MR. MANGO:

2 Q. Okay. Do you have any idea where this
3 photograph would have been taken from?

4 A. It looks like maybe on top of the battery, the
5 ovens.

6 Q. Okay. Does this -- if you were on top of the
7 ovens --

8 MR. LINSIN: Your Honor, maybes and ifs, I
9 don't think are sufficient.

10 THE COURT: Well, is your objection that
11 the foundation has to include from where it was
12 taken?

13 MR. LINSIN: It does, your Honor. That is
14 one part of the foundation. But the other part
15 actually goes to the equipment with which it was
16 taken.

17 THE COURT: Well, anybody can testify to
18 what is reflected in the photograph, for
19 foundational purposes, given the time element and
20 what it purports to represent. So, where is your
21 objection in that regard?

22 MR. LINSIN: Initially as to foundation,
23 as to whether the witness can identify, beyond a
24 maybe or an if, where this photograph was taken
25 from. And then it gets into a question of

1 perspective and whether this is a magnification or
2 not.

3 THE COURT: All right. But I'm not sure
4 that from where it was taken is necessarily a part
5 of the foundation. So I'm going to deny your
6 objection -- or overrule your objection on that
7 foundational ground. But you haven't established a
8 foundation for the use of this photograph in any
9 respect, so it will only remain identified.

10 MR. MANGO: Okay. Thank you, your Honor.

11 BY MR. MANGO:

12 Q. I believe you testified that this might have
13 been taken from on top of the battery.

14 A. Yes.

15 Q. If you were on top of the battery, would this
16 fairly and accurately depict what it would look
17 like looking -- which direction is this photograph
18 taken? Let me stop there. Which direction is this
19 photograph taken?

20 A. It looks like it's more north.

21 Q. Okay. What is generally identified in this
22 part of the photograph?

23 A. The gas piping, your LBA, your LGAs.

24 Q. What department is that?

25 A. By-products.

1 MR. PERSONIUS: And, your Honor, again, we
2 got to look ahead and what was just done was, so we
3 have it on the record, a circle was put right in
4 the middle of the photograph. If we don't somehow
5 verbally put that on the record, later on you'll
6 look at the transcript and have no idea what the
7 witness is testifying about.

8 THE COURT: That's true. But you're
9 working on a foundation --

10 MR. MANGO: Yes, your Honor.

11 THE COURT: -- at this point in time.
12 We'll go through that again. But we don't have a
13 date set. We don't have what it purportedly
14 represents. We don't know if it's accurate in
15 terms of time frame. All of those things I think
16 we have to still explore. If not, I'm going to
17 continue to sustain any objections to the use of
18 the photograph.

19 MR. MANGO: Yes, your Honor.

20 BY MR. MANGO:

21 Q. At this point, I'm just going to have --
22 Mr. Cahill, I'm circling the structure you
23 mentioned where the bleeder would have been
24 located.

25 A. Yes.

1 Q. Okay. Just describe that --

2 THE COURT: You can't do that. We can't
3 do that. Because right now this doesn't purport to
4 represent anything, as far as I know, all right,
5 based on this witness's testimony. So we don't --
6 we cannot use this as an illustrative in the
7 fashion that you're trying to do it.

8 MR. MANGO: Your Honor, I was not -- I do
9 plan to have a witness who actually took this
10 photograph testify, but what I do expect is just at
11 least to have this witness describe the structure
12 that he sees that he believes, so when the
13 photograph does come in, the jury can tie the two
14 together. I'm not -- obviously this --

15 THE COURT: If he doesn't know what it
16 represents at what point in time, if it's not an
17 accurate representation -- you're saying you can do
18 this by connecting this up with a later witness?

19 MR. MANGO: Yes, your Honor.

20 MR. LINSIN: Your Honor, this is testimony
21 now -- first of all, we have no idea and -- the
22 witness has testified that the bleeder valve was
23 located in a different position at some
24 unidentified point in time. We don't know when
25 he's talking about. We don't know if the

1 structures in this system have changed. It is --
2 we're -- we're trying to tie ends together when
3 there are frays all over this line of testimony.
4 And I'm just concerned about trying to turn the
5 testimony into something that it is not.

6 THE COURT: Yeah. Well, at this point
7 without having this witness recognize what this is,
8 at what given time, I'm not going to allow you to
9 go any further on it, even subject to connecting
10 up. Because then it may not get connected up.

11 MR. MANGO: Yes, your Honor, I'll ask that
12 limited question.

13 BY MR. MANGO:

14 Q. Mr. Cahill, do you recognize what this
15 photograph is depicting?

16 A. Yes.

17 Q. Okay. Tell the jury what this photograph is
18 depicting.

19 A. The by-products.

20 Q. Okay. Does this fairly and accurately
21 represent what the by-products area looked like
22 between 2005 and 2009?

23 A. Yes.

24 MR. MANGO: Your Honor, I think at that
25 point now the foundation has been laid, and I would

1 move this Government Exhibit 50 into evidence with
2 the limited -- obviously the weight of the evidence
3 can be taken at this point, and I do expect another
4 witness to talk about this photograph.

5 THE COURT: I think that's right. Unless
6 there's another objection on some aspect of the
7 foundation, I'm going to admit it.

8 MR. LINSIN: We'll address it on
9 cross-examination, your Honor. Thank you.

10 THE COURT: Okay. You're welcome.

11 All right. Fifty received into evidence
12 subject to cross-examination, but foundationally,
13 it can stand.

14 (Government's Exhibit 50 was received into
15 evidence.)

16 MR. MANGO: Thank you, your Honor.

17 Mr. Cahill, now what the jury -- I'd ask that
18 be published for the jury.

19 THE COURT: Okay. It's received into
20 evidence illustratively. And you want it
21 published? I will do that.

22 MR. MANGO: Yes, thank you.

23 BY MR. MANGO:

24 Q. All right. Mr. Cahill, can you tell the jury
25 again now what we're looking at in this photograph?

1 A. Yes. The by-products department.

2 Q. Okay. And you had previously testified I
3 believe -- do you see the structure that would have
4 been used as part of the -- the previous location
5 where this the bleeder was located?

6 A. Yes.

7 Q. Okay. Let's give it another --

8 A. Okay.

9 Q. -- try. If you could try to circle that
10 location on the screen and I will describe it as it
11 appears to be a red triangular area in the left
12 about a third of the way in in the middle of the
13 photograph.

14 A. Yes.

15 Q. All right. Do you see the bleeder pressure
16 release valve on this photograph?

17 A. Yes, I do.

18 Q. If you can just tap the screen where it is.
19 All right. Adding even more, what you drew, the
20 circle for the structure, is about an inch and a
21 half to 2 inches to the right, the triangular
22 structure?

23 A. Yes.

24 Q. Okay. This structure behind there, see the
25 white rusty structure?

1 A. Yes.

2 Q. Do you know what that structure was used for?

3 Is that structure in service today?

4 A. No, it's not.

5 Q. What is that structure?

6 A. They were tanks for coal spray oil.

7 Q. All right. That tower, what is that tower?

8 A. That was actifier.

9 Q. Actifier. Can you tell the jury what the
10 actifier was meant to do?

11 A. Remove sulfur.

12 Q. That tower?

13 A. That would have been the new purifier.
14 Actifier, purifier work together.

15 Q. Okay. Was the actifier or purifier in
16 service -- are they in service currently?

17 A. No.

18 Q. The structures are still there, though?

19 A. Yes, they are.

20 Q. And this tower there?

21 A. That was the LBA.

22 Q. Okay. Great. This line we see here, the green
23 dark-ish line, what is that line?

24 A. That's the gas line going to the boiler house.

25 THE COURT: All right. What was that

1 third tower?

2 THE WITNESS: LBA.

3 THE COURT: Which is?

4 THE WITNESS: I don't know.

5 THE COURT: Just LBA?

6 THE WITNESS: Yes.

7 THE COURT: Does it do anything or --

8 THE WITNESS: Well, right now, no. It's
9 out of service.

10 THE COURT: When it was in service, did it
11 do something --

12 THE WITNESS: Yes.

13 THE COURT: -- if you know?

14 THE WITNESS: Yes.

15 THE COURT: What was that?

16 THE WITNESS: Remove light oil.

17 THE COURT: Light oil, okay.

18 BY MR. MANGO:

19 Q. That was the light oil tower?

20 A. Yes.

21 Q. You call it the LBA. You don't know what those
22 initials stand for?

23 A. No.

24 Q. That's what you were saying you didn't know?

25 A. Yes.

1 Q. Okay. So this line, again, that I drew, what
2 is that line?

3 A. The gas line going to the boiler house.

4 Q. And at some point is there a line that goes
5 back to the -- to the ovens?

6 A. Yes.

7 Q. Could you use this photograph and draw on here
8 how the line goes from the -- from wherever you
9 want to start back to the ovens?

10 A. It's underground. So from here, come all the
11 way over to the battery underground.

12 Q. All right. Now, do you see a release happening
13 from the bleeder?

14 A. Yes.

15 Q. Okay. Is that a release of coke oven gas, if
16 you know?

17 A. Honestly, I can't tell you. I don't know.

18 Q. Okay.

19 A. It's definitely a release though.

20 Q. Okay. Would steam sometimes come out of that
21 bleeder?

22 A. Yes.

23 Q. Is that steam?

24 A. Honestly, I don't know.

25 Q. Okay. So how long was the bleeder in its

1 current position there?

2 A. Maybe 15 years. Dates, again, I don't know.

3 Q. At some point it was at this location. Can you
4 tell the jury why it was moved to its current
5 location?

6 A. Sure. Just like the gas line going underneath
7 to the ovens, the gas line was going underground to
8 the boiler house too. But that one plugged off, so
9 they put the new one up.

10 Q. Draw where the new one is. Okay. So that line
11 wasn't there in the past?

12 A. No.

13 Q. Do you know approximately when that line was
14 put in?

15 A. No, I don't.

16 Q. Would that be at approximately the same time
17 the bleeder was in this location?

18 A. Yes.

19 Q. Okay. What is the frequency with which the
20 bleeder, when it was operational, would release
21 coke oven gas into the atmosphere?

22 MR. PERSONIUS: Your Honor, can we have a
23 time frame, please?

24 MR. LINSIN: Time frame, please.

25 THE COURT: Yes. Objection sustained.

1 BY MR. MANGO:

2 Q. Okay. During the time period of -- let's start
3 with 2005 to 2009. During that time period, what
4 was the frequency with which the bleeder would
5 release coke oven gas to the atmosphere?

6 A. I would say during high production it would
7 release every 20 minutes.

8 Q. All right. Would the 20 minutes -- why would
9 it release every 20 minutes?

10 A. Because then the -- the battery, the ovens,
11 they weren't taking the gas. The gas would back up
12 through the whole system and the pressure would
13 increase and it would release.

14 Q. All right. So describe -- describe how long
15 during a reversal the batteries are not taking any
16 gas -- the ovens are not taking any gas.

17 A. Thirty seconds.

18 Q. Okay. So if there's -- for this 30 seconds if
19 there's no gas going to the ovens, what happens to
20 the pressure in the line where the bleeder setting
21 measures?

22 A. It would increase.

23 Q. Okay. Now, during these releases that occurred
24 during the reversals, how long did they last?

25 A. Ten seconds, 20 seconds.

1 Q. Are you familiar with the term "cogeneration"?

2 A. Yes, I am.

3 Q. All right. Tell the jury what cogeneration is.

4 A. Cogen -- we produced our own power. We got off
5 the grid. So during that time cogen was a big
6 turbine. We were producing our own power.

7 Q. Was the cogeneration system consistently always
8 running?

9 A. Yes.

10 Q. Were there ever times when the cogeneration
11 system were down -- was down?

12 A. Yes.

13 Q. Okay. So there was times when it came down for
14 a period?

15 A. For repairs, whatever, yes, and put back on.

16 Q. Okay. But even -- what I want to talk about is
17 even during the period of cogeneration, would the
18 bleeder release during the reversals?

19 A. If we were at high production, yes. Low
20 production, no.

21 MR. LINSIN: I'm sorry. I didn't hear the
22 end of that response, please.

23 THE WITNESS: Low production, no.

24 MR. LINSIN: Thank you, your Honor.

25 BY MR. MANGO:

1 Q. Were there times -- let me ask this. In your
2 experience, did you ever observe the bleeder
3 release for longer than 10 to 20 seconds?

4 A. Yes.

5 Q. What were the circumstances that you observed
6 these longer releases? If you could, tell the
7 jury.

8 A. If they were pushing out two or three ovens in
9 a row. Again, you're getting a big volume of gas.
10 The gas would back up and release.

11 Q. Okay. Why? During -- during a push of an
12 oven, is there any coke oven gas flow going to that
13 oven?

14 A. As you're pushing it, no. When you start
15 charging it, you create gas.

16 Q. How long would these releases last?

17 A. A minute, two minutes, sometimes longer.

18 Q. Okay. Sometimes longer. So have you ever seen
19 it -- the bleeder release for longer than two
20 minutes?

21 A. Yes.

22 Q. Okay. Do you know if anything -- or were you
23 ever advised that something happened to the bleeder
24 during operation that caused a phone call to be
25 made to you?

1 MR. PERSONIUS: Your Honor, is that
2 leading?

3 THE COURT: Is that an objection --

4 MR. PERSONIUS: Yes. As soon as I said
5 it, I realized --

6 THE COURT: -- just out of curiosity?

7 MR. PERSONIUS: I object on leading, your
8 Honor.

9 THE COURT: You know, there is that rule
10 to where for efficient management I can allow it.
11 And secondly, it's imputed permission under 611(c),
12 if it's an employee of the defendant corporation.
13 So, it probably is leading, but we're going to have
14 to repeat the question anyway.

15 So go ahead.

16 MR. MANGO: I'm going start from scratch,
17 your Honor.

18 BY MR. MANGO:

19 Q. The operations here at Tonawanda Coke
20 Corporation are outside in the elements, is that
21 right?

22 A. Yes, it is.

23 Q. So in your work there and in all the other
24 employees' work, you work in rain --

25 A. Yes.

1 Q. -- is that right?

2 Snow?

3 A. Yes.

4 Q. Windy conditions?

5 A. Yes.

6 Q. Sleet?

7 A. Um-hum.

8 Q. Sunny days?

9 A. Yes.

10 Q. All right. Did you ever work in a lightening
11 storm?

12 A. Yes.

13 Q. Do you know if the bleeder has been struck by
14 lightening?

15 A. Yes.

16 Q. Okay. If you could tell the jury what you know
17 about the bleeder being struck by lightening.

18 A. I was at home one day and I get a telephone
19 call. I get it from the operator. It had just
20 stormed. Lightening hit the bleeder, and they
21 couldn't put out the fire, so they asked me what to
22 do at the time. I was the BP supervisor, so I told
23 them turn on the steam. And they said they turned
24 on the steam, it still won't put it out. I said
25 raise that bleeder up to reduce the pressure. As

1 they raised it up, they had enough steam pressure
2 going up there to put out the fire.

3 Q. Were you on the phone --

4 A. Yeah.

5 Q. -- during this period of time?

6 A. Yes.

7 Q. How long did that phone call last, if you can
8 remember?

9 A. Five, ten minutes, if that.

10 Q. Okay.

11 THE COURT: Approximately, when was that?
12 Do you recall?

13 THE WITNESS: No, I don't. Sorry.

14 THE COURT: Within five years, ten years?
15 Can you do that?

16 THE WITNESS: Maybe seven years back,
17 maybe.

18 THE COURT: From today?

19 THE WITNESS: Yes.

20 THE COURT: Thank you.

21 THE WITNESS: Okay.

22 BY MR. MANGO:

23 Q. Mr. Cahill, you talked about the frequency with
24 which the bleeder would release.

25 A. Um-hum.

1 Q. You talked about every 20 minutes during high
2 production?

3 A. Yes.

4 Q. Okay. Have you seen this go off during low
5 production?

6 A. Honestly, I can't say.

7 Q. All right. Do you know if it's gone off during
8 low production?

9 MR. PERSONIUS: Well, your Honor, I object
10 without a foundation.

11 THE COURT: Well, he can answer yes or no,
12 and we can go from there with a follow-up question.
13 So do you know? Ask the full question, please.

14 MR. MANGO: Do you know if it ever
15 released during low production?

16 THE COURT: Yes or no?

17 THE WITNESS: Yes.

18 BY MR. MANGO:

19 Q. Okay. And how would you know if it released
20 during low production? Are there things that you
21 could look at to determine that?

22 A. No.

23 Q. Okay. Then how would you know it would release
24 during low production?

25 A. If I'm driving by, I see stuff coming out the

1 stack. But that's -- that's the only way you could
2 tell.

3 Q. What was the typical set point for the bleeder
4 between 2005 and 2009?

5 A. I want to say 100 centimeters.

6 Q. Okay. One hundred centimeters. Is that
7 measurement in oil, centimeters of oil?

8 A. Yes. Kerosene, yes.

9 Q. So who made that decision where the bleeder
10 would be set at this 100 centimeters of oil?

11 A. I made the call on that one.

12 Q. Okay. You made the call because you were in
13 what position?

14 A. The supervisor of the by-products.

15 Q. All right. So in your role as supervisor of
16 the by-products, you had some responsibility over
17 this bleeder?

18 A. Yes.

19 Q. All right. Now, if -- would you ever give
20 instructions, as an operator of the -- I'm sorry --
21 the supervisor of the by-products, did you ever
22 give instructions to anyone to raise or lower the
23 bleeder?

24 A. Yes.

25 Q. Okay. If you had given that instruction, and

1 if someone had, in fact, raised or lowered the
2 bleeder, would you expect to find the notation in
3 the log books, the by-products log books?

4 A. Yes, I would.

5 Q. Okay. Those log books we already talked about?

6 A. Yes.

7 Q. Was the bleeder known to other Tonawanda Coke
8 employees?

9 A. Yes.

10 Q. How about employees not in the by-products
11 department? Did they know about the bleeder?

12 MR. PERSONIUS: Your Honor, again,
13 foundation. Object.

14 THE COURT: Yeah, sustained.

15 BY MR. MANGO:

16 Q. Do you know if other employees knew about the
17 bleeder?

18 A. Yes.

19 Q. Okay. Let's talk about the by-products
20 operators.

21 A. Okay.

22 Q. Do you know if the by-products operators knew
23 about the bleeder?

24 A. Yes.

25 Q. Okay. Why would they know about the bleeder?

1 MR. PERSONIUS: Again, your Honor, now
2 we've got to have the foundation. He just said he
3 knew. He didn't say -- that's the whole problem.
4 We are not getting a foundation of how he knows it.

5 THE COURT: Well, I think why would they
6 know is the start of a foundational pursuit. I'll
7 permit that. All right.

8 MR. MANGO: Thank you, your Honor.

9 BY MR. MANGO:

10 Q. Why would the by-products operators know about
11 the bleeder?

12 A. Because they would have to change the chart
13 recorder. And myself, if I was wasn't available to
14 raise or lower the bleeder for some odd reason, I
15 would inform the BP operator to do that.

16 Q. Okay. So this chart recorder, how often did it
17 need to be changed?

18 A. In a 24-hour period. Every day.

19 Q. Every day?

20 A. Yes.

21 Q. Every 24 hours a new chart goes on?

22 A. Yes.

23 Q. What happens to the chart that comes off?

24 A. It would at the time go up in my office.

25 Q. Okay. And how long would you save these charts

1 for?

2 A. Six months to a year.

3 Q. Okay. Was there a standard operating procedure
4 with respect to those charts?

5 MR. PERSONIUS: Objection, your Honor. I
6 don't know what that -- the question is unclear.

7 THE COURT: Okay. Rephrase the question,
8 please, or repeat the question in any event.

9 BY MR. MANGO:

10 Q. You said six months to a year?

11 A. Yes.

12 Q. Okay. What would -- let me ask it this way.
13 How would the charts get disposed of after six
14 months or a year?

15 A. Either in the dumpster or we'd burn them in the
16 ovens.

17 Q. Okay. How would they -- just for discussion
18 purposes, how would they make it into the ovens?

19 A. There is a lid on top of the oven. You just --
20 after you push out the oven you drop them in there?

21 Q. Okay. And would other items get burned in the
22 oven?

23 A. No.

24 MR. LINSIN: Objection, your Honor.
25 Relevance.

1 THE COURT: Sustained.

2 MR. MANGO: I'll move on, your Honor.

3 BY MR. MANGO:

4 Q. So at some point, what would cause you to
5 decide the records could get disposed of either in
6 the dumpster or in the ovens?

7 A. A new year. New calendar year. I would just
8 okay, it's been six months, been a year, time to
9 get rid of them.

10 Q. Were you ever told by anyone how long you need
11 to keep these bleeder charts?

12 A. No.

13 Q. Okay. So we were talking about, when we got
14 into this, the by-products operators, whether they
15 knew or didn't know of the bleeder.

16 A. Right.

17 Q. Okay. How about other employees,
18 non-by-products employees at the Tonawanda Coke
19 Corporation. Do you know, first off, do you know
20 if they knew about the bleeder?

21 A. Yes.

22 Q. All right. How did you -- I'm sorry.

23 How do you know that other employees knew about
24 the bleeder?

25 A. Couple maintenance guys would know about it

1 because you would have to do some maintenance on
2 that valve.

3 Q. Why don't you describe for the jury what type
4 of maintenance you would need to do on the valve?

5 A. Sure. You would have to go up there, grease
6 it, lube it, make sure it's working properly.

7 Q. Do you know a person by the name of Mark
8 Kamholz?

9 A. Yes, I do.

10 Q. Okay. Do you see Mr. Kamholz here in the
11 courtroom today?

12 A. Yes, I do.

13 MR. MANGO: Your Honor, let the record
14 reflect Defendant Kamholz has stood up.

15 And is that who you know as Mark Kamholz?

16 THE WITNESS: Yes.

17 MR. MANGO: Your Honor, I ask for the
18 record to reflect identification of the defendant.

19 THE COURT: Okay. The record will so
20 reflect that the defendant, Mark Kamholz, has been
21 identified by witness Patrick Cahill.

22 MR. MANGO: Thank you, your Honor.

23 BY MR. MANGO:

24 Q. Mr. Cahill, do you know what Defendant
25 Kamholz's position is at the Tonawanda Coke

1 Corporation?

2 A. Yes. He's our environmental guy.

3 Q. How about from 2005 to 2009?

4 A. Still our environmental guy.

5 Q. Do you know what his duties were in that
6 position?

7 A. Making sure everything stayed right. I mean...

8 Q. Were there ever any occasions between 2005
9 and 2009 that Defendant Kamholz would come to be in
10 the by-products area at the Tonawanda Coke
11 Corporation?

12 A. Yes, he would do regular testing.

13 Q. Okay. What kind of testing would he do?

14 A. Gas testing, leakage in the by-products.

15 Q. Okay. So he would check for leakage?

16 A. Yes.

17 Q. How frequently would he do that?

18 A. Every quarter. Once a month. I think every
19 quarter.

20 Q. Okay. Let's talk for a minute about an EPA
21 inspection.

22 A. Sure.

23 Q. At some point were you notified that there was
24 going to be an EPA inspection at the Tonawanda Coke
25 Corporation?

1 A. Yes.

2 Q. Okay. Who notified you that there was going to
3 be an inspection?

4 A. Mark Kamholz.

5 Q. Did -- did anybody else tell you there was
6 going to be an inspection?

7 A. No.

8 Q. Okay. Were you told when the EPA inspection
9 was going to actually occur, the date?

10 A. Again, dates, I don't remember dates. But it
11 was April, I think.

12 Q. April, okay. But the question is, when
13 Defendant Kamholz told you there was going to be an
14 inspection, did he tell you when it was going to
15 be, when EPA would be there?

16 A. Seventeenth or 21st or --

17 Q. Okay. I'm not looking -- did he tell you the
18 start date of the inspection?

19 A. Yes. On Monday.

20 Q. Okay. Prior to the inspection, do you remember
21 if Defendant Kamholz came over to the by-products
22 area to see you?

23 A. Yes.

24 Q. Okay. So this is prior to the inspection?

25 A. Yes, it is.

1 Q. If you could tell the jury, please, how soon
2 prior to the inspection was this?

3 A. It was the Friday before the inspection.

4 Q. All right. So the Friday before he comes over
5 to see you?

6 A. Yes.

7 Q. In the by-products department?

8 A. Yes.

9 Q. What was the purpose for that visit?

10 A. We were going to do a walk-through in the
11 by-products to make sure everything was okay while
12 they were here. Steam hoses, roll them up.

13 Q. During that walk-through, did you have a
14 conversation about the bleeder?

15 A. Yes. As we were walking down Broadway -- you
16 know where Broadway is? Okay. As we were walking
17 down Broadway, the bleeder went off, and Mark
18 turned to me and said, "Pat, we can't have that
19 going off while they're here." So I said, "Okay.
20 I'll take care of it."

21 Q. What did you understand his statement to you to
22 mean?

23 A. Meaning we can't have no gas coming out of that
24 valve. That's my meaning.

25 Q. So there was gas coming out?

1 A. Yes.

2 Q. What was the gas?

3 A. Coke oven gas.

4 Q. Now, if you can remember, it's quite a ways,
5 April of 2009, was that a period of high
6 production, low production, or medium production?

7 A. I want to say medium.

8 Q. Okay.

9 MR. PERSONIUS: My only concern, Judge, is
10 "I want to say" just to make sure it's not a guess.
11 As long as it's not a guess, I don't object. But
12 if it's a guess --

13 THE COURT: Well, you can ask on
14 cross-examination. I'll follow up with that.

15 Is that a guess, or do you have a basis for
16 saying that?

17 THE WITNESS: It's a guess. I really
18 don't know.

19 THE COURT: Okay. Okay. So we'll leave
20 it at that. Medium is a guess.

21 BY MR. MANGO:

22 Q. As a result of the conversation that you had
23 with Defendant Kamholz, what did you do? If you
24 can, explain for the jury.

25 A. Sure. The following week, prior to the

1 inspection, I would come in at 7:30 in the morning
2 and I would go over to that bleeder valve, to the
3 chart recorder, and I would raise it up. And then
4 every evening when they would leave, I would lower
5 it back down.

6 Q. Okay. Why did you do that?

7 A. To make sure it wouldn't go off.

8 Q. Okay. And you mentioned this. How did you
9 physically raise it?

10 A. Well, again, like I described earlier, in the
11 chart recorder I opened up the door. There is a
12 little dial. You would raise that dial up. And
13 then in the evening time, I would go back in and
14 lower it back down.

15 Q. Okay. Let's go back now Friday before the
16 inspection.

17 A. Um-hum.

18 Q. During your pre-inspection walk-through --

19 A. Yes.

20 Q. -- with Defendant Kamholz, were there any other
21 items in the by-products area that Defendant
22 Kamholz indicated a concern to you about?

23 A. Yes.

24 Q. Can you tell the jury what that was?

25 A. Yes. Our coke oven gas drip legs. There are

1 two-inch drip legs. The valves were open a little
2 too much and gas was coming out. So Mark said, "We
3 can't have the valves open here while they're
4 here." I said, "I'll take care of it."

5 Q. Can you please tell the jury what the drip legs
6 are designed to do, how they operate?

7 A. Sure. Coke oven gas, you have condensate in
8 it. So off a 24-inch line, 18-inch line, whatever
9 you have, you have a two-inch pipe coming all the
10 way down to a valve. Condensate being heavier
11 would fill up that pipe. So in the wintertime we
12 would just leave it cracked enough where the
13 condensate would come out. Obviously, a couple of
14 operators might have opened them up too much and
15 gas was coming out while we were doing our
16 inspection.

17 Q. So after the condensate flows out, is there
18 anything else that would flow out of these drip
19 legs?

20 A. Yes. Coke oven gas.

21 Q. So were the drip legs capable of being closed?

22 A. Yes.

23 Q. Okay. What was your practice regarding the
24 opening and closing of the drip legs, your regular
25 practice at the Tonawanda Coke Corporation

1 regarding the opening and closing of the drip legs?

2 A. Sure. Summertime, late fall, the drip legs
3 would be closed at all times. And you do it to --
4 every round you do it, every two hours, you would
5 open them up, let the condensate come out. The
6 minute the condensate come out, you close it back
7 up. Wintertime we would leave them cracked open a
8 little bit so they wouldn't freeze.

9 Q. Wintertime to include into April?

10 A. Yes.

11 Q. Okay. And cracked open so they wouldn't
12 freeze. What -- what do you say freeze? What
13 would freeze in the line?

14 A. The condensate.

15 Q. And you wouldn't want that to happen?

16 A. No.

17 Q. Had it happened in the past?

18 A. Yes.

19 Q. What is the process you need to go through if
20 the condensate freezes in the line?

21 A. You would have to thaw out the line. You would
22 have to put steam to it, thaw it out.

23 Q. So the regular practice then became in the
24 wintertime to keep these cracked open?

25 A. Yes.

1 Q. Okay. So in the cracked open position, after
2 the condensate would flow out, what would then flow
3 out?

4 A. Coke oven gas.

5 Q. So during your pre-inspection walk-through did
6 you have a conversation with Defendant Kamholz
7 about the drip legs?

8 A. Yes.

9 Q. Okay. At the time you had this conversation
10 about the drip legs, was there anything coming out
11 of the drip legs?

12 A. Yes.

13 Q. Okay. What?

14 A. Coke oven gas.

15 Q. What did Defendant Kamholz tell you about the
16 drip legs?

17 MR. PERSONIUS: Objection.

18 MR. LINSIN: Objection. Asked and
19 answered.

20 THE COURT: Is this another conversation,
21 or the one we heard before this?

22 MR. MANGO: I think with the -- the -- now
23 the conversation -- the knowledge about the drip
24 legs, it may have a better understanding to the
25 jury.

1 THE COURT: Not your strongest argument,
2 right?

3 MR. MANGO: Yes.

4 THE COURT: You've already asked and it's
5 been answered, so move on, please.

6 MR. MANGO: Yes, your Honor.

7 THE COURT: Okay.

8 BY MR. MANGO:

9 Q. Okay. So as a result of the statement that
10 Defendant Kamholz made to you about the drip
11 legs --

12 A. Yes.

13 Q. -- what did you do?

14 A. I would raise up the bleeder in the morning. I
15 would go around and make sure all the drip legs
16 were closed.

17 Q. Why would you do that?

18 A. So no gas would come out. No coke oven gas
19 would come out.

20 Q. How did you physically do that, if you can tell
21 the jury, please.

22 A. Sure. It's an Apollo valve, two-inch Apollo
23 valve. It has a long handle on it. You would just
24 close it.

25 Q. So in addition to raising the pressure release

1 valve during the EPA inspection, you would close
2 the drip legs in the morning?

3 A. Yes.

4 Q. Now, did there come a time during the course of
5 the inspection -- now I want to talk about the
6 actual EPA inspection.

7 A. Okay.

8 Q. Did the inspection happen?

9 A. Yes, it did.

10 Q. Okay. Did there come a time during the course
11 of the inspection that you had a conversation with
12 Defendant Kamholz about the bleeder valve in the
13 presence of the inspectors?

14 A. Yes, we did.

15 Q. Okay. Can you tell the jury where -- where
16 were you at the time of this conversation?

17 A. Again, we were over by that green shack, that
18 green building. And I don't know how it happened,
19 but something came out of the stack. And one of
20 the inspectors seen it and said to Mark, "What was
21 that?" Mark said, "Steam." They said "Steam?
22 What else is it?" And he said, "Pressure relief
23 valve." "Well, how long has that pressure relief
24 valve been in service?" Mark said, "I don't know.
25 Pat, how long has that pressure relief valve been

1 in service?" I told him, "I don't know. As long
2 as I've been in the by-products." That's it.

3 Q. Let's talk about that for a minute.

4 A. Sure.

5 Q. So you mentioned that you were in the vicinity
6 of Defendant Kamholz and the inspectors when
7 something released from the bleeder?

8 A. Yes.

9 Q. Okay. And Defendant Kamholz was asked what it
10 was?

11 A. Yes.

12 Q. And he said steam?

13 A. Yes.

14 Q. What you saw releasing, was it steam?

15 A. No.

16 Q. What was it?

17 A. Coke oven gas.

18 Q. Who was present if you can recall during this
19 conversation?

20 A. I don't know. There was probably six or seven
21 people, maybe more. Couple EPA agents and DEC,
22 Mark and myself.

23 Q. When you say "agents," were they agents or
24 inspectors?

25 A. Inspectors.

1 Q. There's a difference.

2 A. Sorry. Sorry.

3 Q. What was your reaction after hearing Defendant
4 Kamholz's response about steam and -- his response?
5 What was your reaction to Defendant Kamholz's
6 response to the inspectors?

7 A. Shocked. Just shocked.

8 Q. Okay. Tell the jury why you were shocked.

9 A. Because, personally, my opinion, I think Mark
10 should have realized or should have known that it
11 is coke oven gas and how long that bleeder was
12 there. He should know how long that bleeder was
13 there.

14 Q. Okay. Did this upset you?

15 A. Yes, it did.

16 Q. Okay. Did you express your anger with anyone
17 else?

18 A. Yes. Towards the end of the day I went back
19 over to the battery. I talked to Gerry Priamo and
20 Tony Brossack. I talked to them about what had
21 just happened. And yeah, I was mad.

22 Q. Okay. Sometime later did you provide a copy of
23 the bleeder charts to the inspectors?

24 A. Yes, I did.

25 Q. Was it the same day?

1 A. No.

2 Q. Okay. The day of this conversation that you
3 had where Defendant Kamholz said it was steam and
4 that he didn't know how long it was there and
5 turned to you --

6 A. Yes.

7 Q. -- after that, do you recall showing anything
8 to any of the inspectors?

9 A. Yes. Again, I don't know which side, I don't
10 know if it was DEC, EPA, but they wanted to see
11 inside the green shack, the chart recorder. So I
12 brought I think two of them in there.

13 MR. PERSONIUS: Judge, I'm sorry to
14 interrupt. Can we have a time frame for the
15 testimony, please? We haven't had a date or
16 anything about when this is.

17 THE COURT: Well --

18 MR. PERSONIUS: Are we talking the same
19 day? Different days?

20 THE COURT: Okay. I mean --

21 MR. MANGO: I'll ask.

22 THE COURT: Set a date. And then you
23 still have other areas to cover?

24 MR. MANGO: Briefly, your Honor, yes.

25 THE COURT: How long?

1 MR. MANGO: Actually not too much, your
2 Honor. Another five minutes. I don't know if now
3 would be a convenient time to break.

4 THE COURT: Okay. I think we need to do
5 that, and then we will set the stage in terms of
6 the time.

7 MR. MANGO: Yes, your Honor.

8 THE COURT: That is the subject of
9 Mr. Personius's concern. And then we can expect
10 five or ten minutes in that vicinity to wrap up
11 with Mr. Cahill and then we'll start
12 cross-examination tomorrow morning.

13 MR. MANGO: Yes, your Honor.

14 THE COURT: Okay. Okay. Keep your minds
15 open. Don't discuss the case. Don't do any
16 research. Remember, everything you need to decide
17 this case and resolve the fact issues will come
18 from the witnesses and the evidence.

19 You've been great today. Thank you. As a
20 reward, we're going to let you go right now.
21 Tomorrow, we'll start at 9:30. Thank you.

22 (Jury excused from the courtroom.)

23 THE COURT: Okay. Thank you. We'll see
24 you tomorrow about 9:30.

25 MR. PERSONIUS: Thank you, Judge.

1 MR. LINSIN: Thank you, your Honor.

2 MR. MANGO: Thank you.

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CERTIFICATION

I certify that the foregoing is a
Correct transcription of the proceedings
Recorded by me in this matter.

s/Michelle L. McLaughlin
Michelle L. McLaughlin, RPR
Official Reporter
U.S.D.C., W.D.N.Y.